



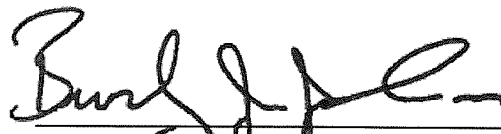
CITY OF ALAMEDA • CALIFORNIA

SPECIAL MEETING OF THE CITY COUNCIL TUESDAY - - - JULY 20, 2010 - - - 6:00 P.M.

Location: City Council Chambers Conference Room, City Hall, corner of Santa Clara Avenue and Oak Street

Agenda:

1. Roll Call – City Council
2. Public Comment on Agenda Items Only
Anyone wishing to address the Council on agenda items only, may speak for a maximum of 3 minutes per item
3. Adjournment to Closed Session to consider:
 - 3-A. CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Property: 2221 Harbor Bay Parkway
Negotiating parties: City of Alameda and SRM Associates
Under negotiation: Price and terms
 - 3-B. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION (54956.9)
Name of case: Collins v. City of Alameda (Boatworks)
4. Announcement of Action Taken in Closed Session, if any
5. Adjournment – City Council


Beverly Johnson, Mayor



CITY OF ALAMEDA • CALIFORNIA

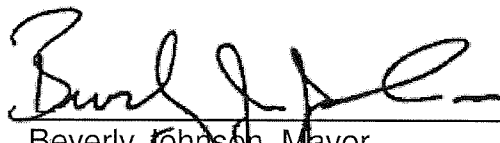
SPECIAL JOINT MEETING OF THE CITY COUNCIL AND
ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY (ARRA), AND
COMMUNITY IMPROVEMENT COMMISSION (CIC)
TUESDAY - - - JULY 20, 2010 - - - 6:59 P.M.

Location: City Council Chambers, City Hall, corner of Santa Clara Ave and Oak Street

Public Participation

Anyone wishing to address the Council/Board/Commission on agenda items or business introduced by the Council/Board/Commission may speak for a maximum of 3 minutes per agenda item when the subject is before the Council/Board/Commission. Please file a speaker's slip with the Assistant City Clerk if you wish to speak.

1. ROLL CALL - City Council, ARRA, CIC
2. MINUTES
 - 2-A. Minutes of the Special Joint City Council, ARRA, CIC Meeting Held on June 19, 2010; the Special Joint City Council, Alameda Public Financing Authority, ARRA, and CIC Meeting Held on June 24, 2010; and the Special Joint CIC and Housing Authority Board of Commissioners Meeting Held on July 6, 2010. [**City Council, ARRA, CIC**] (City Clerk)
3. AGENDA ITEMS
 - 3-A. Adoption of Resolution Denying a Modified Optional Entitlement Application, Including a General Plan Amendment, Zoning Amendment, Master Plan, and Development Agreement Proposed by SCC Alameda Point LLC. (PLN10-0012). [**City Council, ARRA, CIC**] (City Manager)
4. ADJOURNMENT - City Council, ARRA, CIC


Beverly Johnson, Mayor
Chair, ARRA and CIC



CITY OF ALAMEDA • CALIFORNIA

IF YOU WISH TO ADDRESS THE COUNCIL:

1. Please file a speaker's slip with the Assistant City Clerk and upon recognition by the Mayor, approach the podium and state your name; speakers are limited to three (3) minutes per item
2. Lengthy testimony should be submitted in writing and only a summary of pertinent points presented verbally
3. Applause and demonstration are prohibited during Council meetings

AGENDA - - - - REGULAR MEETING OF THE CITY COUNCIL TUESDAY - - - - JULY 20, 2010 - - - - 7:00 P.M.

[Note: Regular Council Meeting convenes at 7:00 pm, City Hall, Council Chambers, corner of Santa Clara Avenue and Oak Street]

The Order of Business for City Council Meeting is as follows:

1. Roll Call
2. Agenda Changes
3. Proclamations, Special Orders of the Day and Announcements
4. Consent Calendar
5. City Manager Communications
6. Regular Agenda Items
7. Oral Communications, Non-Agenda (Public Comment)
8. Council Referrals
9. Council Communications (Communications from Council)
10. Adjournment

Public Participation

Anyone wishing to address the Council on agenda items or business introduced by Councilmembers may speak for a maximum of 3 minutes per agenda item when the subject is before Council. Please file a speaker's slip with the Assistant City Clerk if you wish to address the City Council.

SPECIAL MEETING OF THE CITY COUNCIL	6:00 P.M.
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COUNCIL CHAMBERS CONFERENCE ROOM	
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Separate Agenda (Closed Session)	
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SPECIAL JOINT MEETING OF THE CITY COUNCIL, ALAMEDA	6:59 P.M.
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REUSE AND REDEVELOPMENT AUTHORITY, AND COMMUNITY	
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IMPROVEMENT COMMISSION, CITY COUNCIL CHAMBERS	
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REGULAR MEETING OF THE ALAMEDA PUBLIC FINANCING	7:01 P.M.
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AUTHORITY, CITY COUNCIL CHAMBERS	
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Separate Agenda	
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1. ROLL CALL - City Council
2. AGENDA CHANGES
3. PROCLAMATIONS, SPECIAL ORDERS OF THE DAY & ANNOUNCEMENTS
- 3-A. Presentation by the Park Street Business Association on the 26th Annual Art and Wine Faire.
4. CONSENT CALENDAR

Consent Calendar items are considered routine and will be enacted, approved or adopted by one motion unless a request for removal for discussion or explanation is received from the Council or a member of the public
- 4-A. Minutes of the Special Joint City Council and Public Utilities Board Meeting and Regular City Council Meeting Held on July 6, 2010; and the Special City Council Meeting Held on July 7, 2010. (City Clerk)
- 4-B. Bills for Ratification. (Finance)
- 4-C. Recommendation to Award Contract in the Amount of \$88,974, Including Contingencies, to Roto Rooter for Citywide Sewer Mains Video Inspection, Phase 3, No. P.W. 02-10-08. (Public Works)
- 4-D. Recommendation to Amend the Consultant Contract in the Amount of \$38,682, Including Contingencies, to Noll & Tam for Construction of Administration for the Neighborhood Library Improvement Project, No. P.W. 10-09-29. (Public Works)
- 4-E. Recommendation to Adopt Plans and Specifications and Authorize a Call for Bids for the Upgrades to the Northside Storm Drain Pump Station, No. P.W. 02-10-06. (Public Works)
- 4-F. Recommendation to Adopt Plans and Specifications and Authorize a Call for Bids for the Repair of Portland Cement Concrete Sidewalk, Curb, Gutter, Driveway, and Minor Street Patching, Fiscal Year 2010-20100, Phase 11, No. P.W. 06-10-04. (Public Works)
- 4-G. Recommendation to Authorize a Request for Proposal to Provide Turnkey Design-Build Services for Photovoltaic (Solar) Generation System, No. P. W. 05-10-12. (Public Works)
- 4-H. Adoption of Resolution Authorizing the Interim City Manager to Apply for Regional Measure 2 Bridge Toll Funds for the Operating Subsidy and Capital Projects for the City of Alameda Ferry Services, and Adopt a Resolution of Intention to Transfer the Alameda/Oakland and Harbor Bay Ferry Services to the San Francisco Bay Area Water Emergency Transportation Authority. (Public Works)

- 4-I. Adoption of Resolution Authorizing the Public Works Director to Submit Grant Applications to the California Department of Resources and Recovery, Formerly the Integrated Waste Management Board, for All Available Grants Under the California Oil Recycling Enhancement Act for the Period of July 1, 2010 Through June 30, 2015. (Public Works)
- 4-J. Adoption of Resolution Amending Resolution No. 9460 to Reflect Current Positions and Entities to be Included in the City of Alameda's Conflict of Interest Code and Rescinding Resolution No. 14400. (City Attorney)
- 4-K. Final Passage of Ordinance Revising the City's Sewer Service Charges. (Public Works)

5. CITY MANAGER COMMUNICATIONS (Communications from City Manager)

None

6. REGULAR AGENDA ITEMS

- 6-A. Adoption of Resolution Approving Proceedings to Refinance Installment Payment Obligations of Alameda Municipal Power, Approving Issuance of Revenue Bonds by the Alameda Public Financing Authority for Such Purposes, and Approving Related Documents and Actions. (Alameda Municipal Power) [In conjunction with Alameda Public Financing Authority Item 3-A]
- 6-B. Introduction of Ordinance Amending the Alameda Municipal Code by Amending Subsection 8-7.11 (Recreational Vehicles, Trailers, and Boat Trailers) of Section 8-7 (Parking Prohibitions) of Chapter VIII (Traffic, Motor Vehicles and Alternative Transportation Modes). (Police)

7. ORAL COMMUNICATIONS, NON-AGENDA (Public Comment)

Any person may address the Council in regard to any matter over which the Council has jurisdiction or of which it may take cognizance, that is not on the agenda

8. COUNCIL REFERRALS

Matters placed on the agenda by a Councilmember may be acted upon or scheduled as a future agenda item

- 8-A. Consideration of Establishing a Foreign Trade Zone (FTZ) in Alameda. (Councilmember Matarrese)
- 8-B. Consider Suspending the Sunshine Task Force until the District Attorney has Taken Action regarding the Investigatory Reports. (Mayor Johnson)

- 8-C. Discuss/Review City Contributions to 4th of July Parade and Determine, If Necessary, Any Rules Regarding Participation, Signs, Campaigning, etc. (Councilmember Gilmore)

9. COUNCIL COMMUNICATIONS (Communications from Council)

Councilmembers can address any matter, including reporting on any Conferences or meetings attended

- 9-A. Consideration of Mayor's nominations for appointment to the Housing Commission, Planning Board, Public Utilities Board, and Oakland Chinatown Advisory Committee.

10. ADJOURNMENT - City Council

- Materials related to an item on the agenda are available for public inspection in the City Clerk's Office, City Hall, Room 380, during normal business hours
- Sign language interpreters will be available on request. Please contact the City Clerk at 747-4800 or TDD number 522-7538 at least 72 hours prior to the Meeting to request an interpreter
- Equipment for the hearing impaired is available for public use. For assistance, please contact the City Clerk at 747-4800 or TDD number 522-7538 either prior to, or at, the Council Meeting
- Accessible seating for persons with disabilities, including those using wheelchairs, is available
- Minutes of the meeting available in enlarged print
- Audio Tapes of the meeting are available upon request
- Please contact the City Clerk at 747-4800 or TDD number 522-7538 at least 48 hours prior to the meeting to request agenda materials in an alternative format, or any other reasonable accommodation that may be necessary to participate in and enjoy the benefits of the meeting



CITY OF ALAMEDA • CALIFORNIA

REGULAR MEETING OF THE ALAMEDA PUBLIC FINANCING AUTHORITY (APFA)

TUESDAY - - - JULY 20, 2010 - - - 7:01 P.M.

Location: Council Chambers, City Hall, corner of Santa Clara Avenue and Oak Street

Public Participation

Anyone wishing to address the Board on agenda items or business introduced by Board Members may speak for a maximum of 3 minutes per agenda item when the subject is before the Board. Please file a speaker's slip with the Assistant City Clerk if you wish to speak on an agenda item.

1. Roll Call - APFA

2. MINUTES

2-A. Minutes of the Special Joint City Council, Alameda Public Financing Authority, Alameda Reuse and Redevelopment Authority, and Community Improvement Commission Meeting Held on June 24, 2010; and the Regular Alameda Public Financing Authority Meetings Held on July 6, 2010 and July 7, 2010. (City Clerk)

3. Agenda Item

3-A. Adoption of Resolution Authorizing the Issuance and Sale of Revenue Bonds to Refinance Installment Payment Obligations of Alameda Municipal Power and Approving Related Documents and Actions. (Alameda Municipal Power) [In conjunction with City Council Item 6-A]

4. Oral Communications (Public Comment)

Any person may address the Board in regard to any matter over which the Board has jurisdiction or of which it may take cognizance that is not on the agenda

5. Board Communications (Communications from the Board)

6. Adjournment - APFA

UNAPPROVED
MINUTES OF THE SPECIAL JOINT CITY COUNCIL,
ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY (ARRA), AND
COMMUNITY IMPROVEMENT COMMISSION (CIC) MEETING
SATURDAY- -JUNE 19, 2010- -9:00 A.M.

Mayor Johnson convened the meeting at 9:16 a.m.

Roll Call - Present: Councilmembers deHaan, Matarrese and Mayor Johnson – 3.

Absent: Councilmembers Gilmore and Tam – 2.

(10-) General Introduction

The Interim City Manager gave a presentation on the economic environment and organizational focus.

(10- A) Financial Policy Guiding Principles

The Financial Policy Guiding Principles were reviewed.

Mayor Johnson left the meeting at 10:05 a.m. and returned at 1:02 p.m.

* * *

The meeting was recessed at 10:15 a.m. and reconvened at 10:25 a.m.

* * *

The discussion of Financial Policy Guiding Principles continued.

(10- B) Employment Policy Guiding Principles

The Employment Policy Guiding Principles were reviewed.

Speakers: Jean Sweeney, Alameda; and Trish Spencer, School Board.

* * *

The meeting was recessed at 11:40 a.m. and reconvened at 12:55 p.m.

* * *

(10- C) Fiscal Year 2010-2011 Budget and Fiscal Year 2011-2012 Forecast – All funds

The Interim City Manager provided a handout and gave a presentation.

Speakers: Jean Sweeney, Alameda; Robb Ratto, Park Street Business Association; Jean Sweeney, Alameda; Jean Sweeney, Alameda.

(10- D) Program Highlights

The Interim City Manager reviewed the list of program highlights.

The Deputy City Manager – Administrative Services noted follow up items on a flip chart.

The Interim City Manager provided the Summary of City Council Discussion of Priorities Held on April 1, 2008 and stated the priorities would be reviewed at the July 27, 2010 meeting.

Adjournment

There being no further business, Mayor/Chair Johnson adjourned the meeting at 3:21 p.m.

Respectfully submitted,

Lara Weisiger, City Clerk
Secretary, CIC

The agenda for this meeting was posted in accordance with the Brown Act.

UNAPPROVED
MINUTES OF THE SPECIAL JOINT CITY COUNCIL,
ALAMEDA PUBLIC FINANCING AUTHORITY (APFA), ALAMEDA
REUSE AND REDEVELOPMENT AUTHORITY (ARRA), AND
COMMUNITY IMPROVEMENT COMMISSION (CIC) MEETING
THURSDAY- -JUNE 24, 2010- -7:00 P.M.

Mayor Johnson convened the meeting at 7:07 p.m. Councilmember/Authority Member/ Board Member/Commissioner Gilmore led the Pledge of Allegiance.

ROLL CALL - Present: Councilmembers / Authority Members / Board Members / Commissioners deHaan, Gilmore, Matarrese, Tam and Mayor/Chair Johnson – 5.

Absent: None.

CONSENT CALENDAR

Mayor/Chair Johnson announced that the Resolutions Approving Revised Documents [paragraph no. 10- CC] were removed from the Consent Calendar for discussion.

Councilmember/Board Member/Commissioner Tam moved approval of the remainder of the Consent Calendar.

Councilmember/Board Member/Commissioner Matarrese seconded the motion, which carried by unanimous voice vote – 5. [Items so enacted or adopted are indicated by an asterisk preceding the paragraph number.]

(*10- CC) Recommendation to Award Legal Ad Contract for Fiscal Year 2010-11. Accepted.

(*10- CC) Resolution No. 14461 “Approving Interim Expenditures Prior to Adoption of the Operating and Capital Budget for FY10-11.” Adopted;

(*ARRA) Resolution No. 48, “Approving Interim Expenditures Prior to Adoption of the Operating and Capital Budget for FY10-11.” Adopted; and

(*10- CIC) Resolution No. 10-168, “Approving Interim Expenditures Prior to Adoption of the Operating and Capital Budget for FY10-11.” Adopted.

(10- CC) Resolution No. 14462, “Approving Revised Documents Related to the Issuance of Refunding Bonds for the City’s Community Facilities District No. 1 (Harbor Bay) and Marina Village Assessment District 89-1, and Authorizing Actions in Connection Therewith.” Adopted; and

(10- APFA) Resolution No. 10-21, "Approving Revised Documents Related to Local Agency Refunding Revenue Bonds (Harbor Bay CFD and Marina Village AD), and Authorizing Actions in Connection Therewith." Adopted.

Councilmember/Authority Member Gilmore stated two series of bonds would be issued because the bond rating did not come back favorably; one would be a senior series and the other would be a subordinate series; inquired whether the cost would be more if two series were issued; further inquired whether the subordinate series would be riskier and whether someone would want to buy the bonds.

Mark Holmstedt, Westhoff, Cone & Holmstedt (WCH), responded that he is not happy with the rating; stated the rating is BBB, which is not a bad rating for a land-secured bond; Harbor Bay Community Facilities District (CFD) No.1 has 630 homes; everyone has been paying taxes; the area has been built out for a number of years; the senior bonds would correspond to the CFD; the subordinate bonds would correspond to Marina Village Assessment District 89-1 (AD); revenues come from both districts; a default would not hurt the other district; the CFD is rated A-; the AD bonds have four years left; a debt service reserve fund has been established to ensure that if the top three taxpayers all default for two years, the bonds would still be paid; a foreclosure proceeding could take place to ensure payment; that he thinks people should feel good about both series; the AD district has never had a full payment delinquency for longer than a year; one taxpayer had a small delinquency up until a week ago; the matter has been cured; that he would expect a little bit better rate on the A- bonds; the cost would not be more for issuing two series.

Councilmember/Authority Member Gilmore stated the City might get a better rating by splitting the bond.

Mr. Holmstedt stated last week, one bonding service rated the transaction BBB for one bond; Standard & Poor's (S&P) does not agree; the transaction was restructured; the CFD bonds are different than an assessment district in that more taxes pay the bonds, which is considered to be a higher credit quality; the Marina Village District has a very heavy ownership concentration; three of the highest taxpayers control 78% of all taxes; having the three taxpayers default would create a problem and is the reason for the lower rating.

The Interim City Manager/Executive Director stated the CFD fairs better and the AD fairs no worse by splitting the bond.

Mr. Holmstedt stated bidders would be allowed to bid on one or both bonds; a notice was sent a week ago regarding the forthcoming transaction; a number of major Wall Street firms are interested in bidding on the bonds; major insurance companies are looking towards reinvesting the bonds; that he expects to receive strong bids next week.

Councilmember/Authority Member Tam inquired whether Marina Village brought down the bond rating because of a past delinquency and resulted in a BBB between S&P and Fitch, Inc.

Mr. Holmstedt responded S&P was a little more concerned about the initial Marina Village delinquency than Fitch, Inc.

Councilmember/Authority Member Tam inquired whether the concern was because of the three highest taxpayer's delinquencies.

Mr. Holmstedt responded only one of the top three taxpayers was delinquent; stated S&P was concerned about the delinquency.

Councilmember/Authority Member Tam inquired whether the delinquency is the reason for dropping the rating from A- to BBB.

Mr. Holmstedt responded in the negative; stated the A- rating is a result of restructuring; last week's single bond issue was rated BBB; having two ratings is the result of separating the homeowner portion from the business portion.

Councilmember/Authority Member Tam inquired whether an A- rating is the result of aggregating both bonds.

Mr. Holmstedt responded the higher rating is the result of separating the bonds and a pledge of all revenues first for the senior bond.

Councilmember/Authority Member Tam inquired whether or not the CFD would be carrying the AD because of AD's poorer rating.

Mr. Holmstedt responded in the affirmative; stated neither district would be supporting the other.

Councilmember/Authority Member Tam stated Council wanted to focus on refinancing debt that would immediately affect the General Fund; however, the market was not that great at the time; tonight's recommendation is not in said category; inquired what would be WCH's fee.

Mr. Holmstedt responded total financial advisory fees are estimated to be approximately \$196,000.

Councilmember/Authority Member Tam inquired whether WCH would get 70%.

Mr. Holmstedt responded approximately; stated fees would go down if the transaction goes down; fees would not exceed \$196,000.

Councilmember/Authority Member Tam inquired whether fees would come out of bond refunding, not the General Fund, to which Mr. Holmstedt responded in the affirmative.

The Interim City Manager/Executive Director stated dirt bonds are pledged by land collateral, not the General Fund; refunding would not help the General Fund but would help taxpayers.

Mr. Holmstedt stated Harbor Bay homeowners should expect a savings between \$417 and \$761; Marina Village business owners would see taxes reduced by approximately 10%.

Councilmember/Authority Member Gilmore inquired what is the difference between refinancing and refunding.

Mr. Holmstedt responded nothing; stated a lot of time was spent on the issue last week; that he apologizes for having to bring the transaction back; the structure is superior; ratings have been confirmed; the transaction is as good as possible.

Councilmember/Authority Member Matarrese moved adoption of the resolutions.

Vice Mayor/Authority Member deHaan seconded the motion, which carried by the following voice vote: Ayes: Councilmembers/Authority Members deHaan, Gilmore, Matarrese, and Mayor/Chair Johnson – 4. Abstentions: Councilmember/Authority Member Tam – 1.

CITY MANAGER/EXECUTIVE DIRECTOR COMMUNICATION

(10- CIC) Redevelopment Impacts on Alameda Unified School District

David Doezeema, Keyser Marston Associates, gave a Power Point presentation.

Commissioner deHaan stated CIC payments to Alameda Unified School District (AUSD) total \$1.8 million for capital and \$3 million over ten years; inquired whether there are limitations on how property tax revenue can be spent.

Mr. Doezeema responded capital funds need to be spent on buildings and improvements; housing funds need to be spent on housing consistent with various redevelopment law requirements; 40% needs to be spent for very low income housing and the balance needs to be spent on moderate income housing.

Commissioner deHaan inquired whether the split is through an agreement or State law.

Mr. Doezeema responded through an agreement; stated most of the money included in

the \$5 million is paid pursuant to the Business and Waterfront Improvement Project (BWIP) Agreement; the Agreement was negotiated in 1991 when the project area was established; a small portion of the capital comes from another project area.

Commissioner deHaan inquired whether Peralta Community College has a similar breakdown, to which Mr. Doezeema responded the split is unique to AUSD.

Commissioner Matarrese inquired how AUSD became the recipient of housing money and if so, what was the rationale, to which Mr. Doezeema responded that he does not know the background.

The Economic Development Director stated staff has tried to piece together the story; nobody is around today to explain the issue; other redevelopment agencies were doing the same thing because recruiting teachers was difficult due to California's high cost of living; San Jose also did some teacher housing to deal with the issue in the late 1990's; that she is not sure how and who decided that AUSD wanted to have a housing fund.

Commissioner Matarrese inquired how easy it would be to change the Agreement.

The Economic Development Director responded the Agreement cannot be altered; stated the contractual arrangements were made before State law changed to stop negotiated agreements between redevelopment agencies and school districts; AB 1290 requires all contractual negotiations to stop and everyone has formulated pass throughs.

Commissioner deHaan inquired whether AUSD puts any money away for housing, to which the Economic Development Director responded not to her knowledge.

Commissioner deHaan stated the situation is unique; 65% of the funds goes to housing.

The Economic Development Director stated the Redevelopment Agency is obligated to ensure that the money goes into housing.

Commissioner Tam stated Former Assistant City Manager David Brandt explained to her that the Mastick Senior Center location belonged to the School District; an agreement was made which included providing housing for the School District.

The Economic Development Director stated the Agreement is separate; that she is not sure how the issue came about; the City agreed to take Mastick Senior Center in exchange for giving other things to the School District; the City pledged to provide cash and additional support for the construction of Ruby Bridges school and traded a lease at the Encinal Terminal area; the School District collects revenue off the lease.

Chair Johnson stated the School District has leased property at the former Naval Base.

Commissioner Tam inquired how the Island High School commitment turned into a need for housing.

The Economic Development Director responded the City does not have a commitment for Island High School; stated the City is interested in acquiring Island High School to build housing.

Commissioner Tam stated Mr. Brandt explained to her that the City had to provide a pass through for the School District and there was potential for working with the School District to provide an advance when the School District has financial problems to see if the City could provide some type of in-kind service for an Island High School trade.

The Economic Development Director stated the City has explored ways to make use of the housing money for the School District; the School District has the property [Island High School] that the City is interested in as a location for affordable housing; over the last couple of years, the City has discussed leasing the property long term, buying the property out right, or leasing the property and making some type of large payment upfront so that the School District could use the money for something other than housing; now, there is a unique time window in the law for the next two years and two months in which the School District can use the money from land sales for operating purposes rather than being confined to capital.

Commissioner deHaan inquired whether any money could have been designated for operation when the pass through was put together.

The Economic Development Director responded the State requires that a portion of the pass through goes to capital and the balance goes to operating; stated the issue with the 43.3% operating portion is that the School District needs to report the amount received to the State, and the State reduces funding for operation; school districts are funded based upon an average daily attendance formula.

Chair Johnson stated the pass through is a liability to the State.

Commissioner Gilmore requested an explanation of the Educational Revenue Augmentation Fund (ERAF) shift.

Mr. Doezeema stated the ERAF take from the CIC and other redevelopment agencies across the State goes into a special fund in each county within the State; the State uses the money to pay what it is required to pay to schools; under Proposition 98, the State has an obligation to get all school districts to a certain funding level.

Commissioner Gilmore inquired whether the \$7.4 million [taken from Alameda] has not gone to AUSD, but to school districts statewide in the past ten years.

Mr. Doezenia responded in the affirmative; stated the money is really going to the State; the \$7.4 million represents the different State takes over the last ten years through Fiscal Year 2009-2010, not Fiscal Year 2010-2011; \$4.6 was taken in Fiscal Year 2009-2010; the \$7.4 million includes takes for Fiscal Years 2002-2003, 2003-2004, 2004-2005, 2005-2006; \$4.6 million represents almost thirty percent of the City's redevelopment money.

Chair Johnson stated the money goes to schools and reduces the State's liability to schools; the schools are no better off.

Commissioner deHaan inquired whether schools are any worse off.

Mr. Doezenia responded in the negative; stated the matter is a budget solution for the State only; continued the presentation.

Commissioner Tam inquired whether pass through funds do not occur until tax increment is produced, to which Mr. Doezenia responded in the affirmative; continued the presentation.

Commissioner deHaan inquired when pass throughs started, to which Mr. Doezenia responded Fiscal Year 2005-2006.

Commissioner deHaan inquired whether the Agreement could have been modified.

Mr. Doezenia responded the payment requirement is dictated by a statutory formula in California redevelopment law.

The Economic Development Director stated the Agreement is not with the West End Community Improvement Project (WECIP), but with BWIP.

Mr. Doezenia continued the presentation.

Chair Johnson inquired whether the 2009-2010 decline is due to reassessments.

Mr. Doezenia responded the decline represents downward adjustments from assessed home values due to the decline in the market; stated the major factor is that one-time revenues were received in Fiscal Year 2008-2009 that did not happen again in Fiscal Year 2009-2010; continued the presentation.

Commissioner Matarrese inquired whether the Fiscal Year 2009-2010 Alameda Point Improvement Project (APIP) negative tax increment is accounted for in balancing the budget for the redevelopment area and is not coming from the General Fund.

Mr. Doezenia responded in the affirmative; stated the negative tax increment was paid out of the APIP fund balance, including borrowing from the housing set aside which is a permitted method; continued the presentation.

The Economic Development Director stated the CIC has partnered with AUSD to fund a number of projects; the CIC developed the Ruby Bridges Park and Community Center; AUSD did not have to buy and maintain the required open space; the first right of use is given to the School District through a Joint Use Agreement; seven clean acres were delivered to AUSD in addition to all the infrastructure for constructing Ruby Bridges School; a cash contribution was made for construction of the school, which was negotiated in the Contract.

Commissioner deHaan inquired whether additional property taxes would be \$3.1 million if there was not a redevelopment agreement.

Mr. Doezenia responded the \$16 million generated would be split between the School District, County and others if the CIC did not collect tax increment.

Chair Johnson inquired whether the State always lowers the allocation if AUSD receives more from local taxes.

Mr. Doezenia responded in the affirmative; stated AUSD gets \$49 million regardless.

Commissioner Tam inquired whether AUSD always gets \$49 million from the State.

Mr. Doezenia responded the number changes from year to year; stated the amount is based on enrollment and complicated State formulas.

Commissioner Tam inquired whether the \$3.1 million amount would change if the State gives AUSD less.

Mr. Doezenia responded in the negative; stated if the revenue limit was \$45 million instead of \$49 million next year, the State would give AUSD \$4 million less; the key variable is what the State provides.

Chair Johnson stated local tax goes in first and the State makes up the difference of the amount the State determines according to the formula; the school districts get less from the State if more is received from local tax.

Commissioner Matarrese inquired whether the difference from having a redevelopment area is that AUSD has an additional \$776,000, to which Mr. Doezenia responded in the affirmative.

Commissioner Matarrese inquired whether a large amount goes for housing, to which

Mr. Doezenia responded \$480,000 goes to housing.

Speakers: David Howard, Alameda, (provided handout); and Gretchen Lipow, Alameda.

Following Mr. Howard's comments, Mr. Doezenia stated a parcel tax funds the potential of getting above the \$49 million revenue limit; local property tax can only contribute to offsetting what State money would be available to get to the \$49 million revenue limit; a parcel tax adds something new; the \$3.1 million is not new to AUSD; the speaker was drawing a connection between redevelopment, the CIC's tax increment collection, and the State's budget situation; the State's budget situation is very complex; the estimated shortfall is \$20 billion; that he does not think the \$20 billion shortfall can be blamed on the \$3.1 million.

Commissioner Gilmore stated both columns [on Chart 5] have a \$49 million revenue limit; inquired whether AUSD can spend the money however it wants.

Mr. Doezenia responded in the affirmative; stated the money is operating money and is not restricted to capital.

Commissioner Gilmore inquired whether the \$3.1 million has no restrictions but does not add to the operating budget in either column.

Mr. Doezenia responded in the affirmative; stated the money is not new but is flexible.

Chair Johnson inquired whether the total amounts in both columns are operating money, to which Mr. Doezenia responded in the affirmative.

Chair Johnson stated the speaker thought that part of the money is restricted.

Mr. Doezenia stated the only part that is restricted is the pink part at the top [\$776,000]; both columns are unrestricted.

The Economic Development Director stated the \$293,000 for capital can be freed up for teachers.

Chair Johnson stated the speaker thought that one column is better than the other; the Economic Development Director is saying that the columns are the same.

The Economic Development Director stated both columns are the same except for the pink part.

Chair Johnson inquired whether both columns are the same for AUSD, to which Mr. Doezenia responded in the affirmative.

Commissioner Tam stated last week, the City sent the State a little over \$4 million in redevelopment funds; inquired whether AUSD might not see any of the money because the money could go to other school districts; further inquired whether the City's redevelopment funds going to the State and the School District's financial issues have no correlation.

Mr. Doezeema responded that the \$4.6 million paid into the ERAF can be spent anywhere in California.

Commissioner deHaan inquired whether redevelopment areas pay the same tax, to which Mr. Doezeema responded in the affirmative.

Commissioner deHaan stated all cities skim off a portion; the revenue is not going into the State's pot.

Mr. Doezeema stated that he qualifies Commissioner deHaan's comment; the CIC is collecting tax increment generated by the Bayport project; some people would say that the money would not exist if not for the CIC; the CIC funds itself.

Commissioner Matarrese stated CIC generated projects keep money local; the State is compelled by the 1970's Serrano vs. Priest decision; the decision was designed so that rich cities would not place poor schools at a disadvantage; the State is compelled to put every California student on a level playing field; the City's redevelopment puts \$293,000 into the School District's capital; rich cities that can afford a higher parcel tax have better schools than poor cities.

Commissioner Gilmore stated the issue is why the Robles-Wong case is so important; AUSD and other school districts sued California; the State is not living up to the Serrano decision; people say that AUSD has other methods to raise money besides parcel taxes which is not true because the State takes the money; unfortunately, the matter will take years [to correct] because of the how things wind through the legal system.

(10- CC) Update on Measure P

The Interim City Manager gave a brief presentation.

Vice Mayor deHaan stated the City would have lost approximately \$1.8 million without Measure P; the City stayed status quo.

The Interim City Manager stated approximately \$2 million more was picked up in Fiscal Year 2008-2009 than would have been without Measure P.

(10- CC) Citywide Asset Management Policy

The Interim City Manager gave a Power Point presentation; stated the Asset Management Policy would be brought back at the July 20, 2010 or July 27, 2010 Council meeting.

Councilmember Matarrese stated one maximization of return might be a contribution to infrastructure; his preference would be to tilt to the hard asset if he had to choose between the General Fund versus something going into the ground, ensuring that the shoreline is shored up and streets and sewers are maintained at a high level; the hard asset has a longer life.

The Interim City Manager continued the presentation.

Councilmember Gilmore inquired how the Veteran's Building and Meyer's House would be classified.

The Interim City Manager responded today, the Veteran's Building would be considered community use; stated the Veteran's Building could be considered operational if the City rehabilitated the building into office space; the Meyer's House is considered community use.

Councilmember Tam inquired whether a fair appraisal would be performed for long-term lease or sale.

The Interim City Manager responded an appraisal would be done for a sale; stated other criteria would be considered for other uses to determine how the City could get management of the asset in terms of return.

Councilmember Matarrese stated the top priority of the asset management strategy should be to maintain the asset; the Tidelands has very expensive maintenance; bringing the Veteran's Building back to the way it was would be very expensive.

Mayor Johnson stated a balance is required because maintenance funding is needed; the City does not have a strategic plan for maintaining assets.

Councilmember Matarrese stated that he understands the balance and need for revenue; in hard times, revenue is always used for operations and maintenance is deferred.

Mayor Johnson stated maintenance funding needs to be established; the Veteran's Building is not the only asset that has not been maintained; funds need to be set aside for accumulated, deferred maintenance.

Vice Mayor deHaan stated properties need to get back to an original baseline; then, maintenance can be done; many times, excess property is something to make money

on; the asset could be held onto for something that could be beneficial to the community.

The Interim City Manager stated last Saturday [at the June 19, 2010 meeting], discussions included considering development of a parking lot for housing; the goal is to come up with a policy that has a criteria of interest against which to make a decision.

Councilmember Matarrese stated a policy for one-time revenue sources not being used for operation was discussed on Saturday; the policy would include putting one-time revenue sources into maintaining hard assets; the policy would need to be linked to other budgeting policies; unused assets could be sold to leverage other assets to create quality of life, jobs, or a tax stream.

Councilmember Gilmore stated that she likes the idea of prioritizing; priorities are needed when discussing maximizing value benefit; the balancing act is like a road map.

Mayor Johnson inquired whether the Interim City Manager would have a list of specific assets when the matter comes back.

The Interim City Manager responded assets would not be classified; stated staff would come up with a streamline way of applying the policy; a report might be ready by September.

Mayor Johnson stated an extra column is needed for funding when the matter comes back; the City needs to be honest about whether there are too many assets to maintain.

In response to Vice Mayor deHaan's inquiry, the Interim City Manager stated most cities that incorporated before 1962 are in the same situation as Alameda; assets have not been inventoried; cities that incorporated in the 1960's are now enjoying ten years of no payments out of the General Fund; City departments pay a proportionate amount of money on debt service; that she keeps charging departments once the debt is paid off and has been setting aside money for deferred maintenance; Alameda practically owns everything it has; the City's first challenge is to go back and recover other items in the internal service fund; the next challenge is to continue to have departments absorb proportionate costs of putting a dollar amount into the internal service fund which would be used for deferred maintenance reserve; the goal is to charge departments x amount of dollars in fixed charges in the facilities maintenance fund; the City was only able to put in \$100,000 last year.

Vice Mayor deHaan inquired whether the Interim City Manager is building a new model or whether a good model is out there.

The Interim City Manager responded older cities are not disciplined about putting money away for deferred maintenance.

Vice Mayor deHaan stated the City is trying to establish some new ground.

The Interim City Manager stated the Asset Management Policy is built on a privatization model.

Mayor Johnson stated the nation's bridges cannot be maintained.

The Interim City Manager stated Government Accounting Standard Board (GASB) 45 requires cities to count every asset; cities were not aware of the amount of public assets or values; continued the presentation.

Mayor Johnson inquired whether a provision could be added regarding rent increases; stated two twenty-five year leases do not provide for any rent increase.

The Interim City Manager responded the justification would depend upon the use, utilization schedule, and measurement criteria; stated cities that foster a lot of incubator businesses often use the "flat for five" formula, which provides for no increases for five years.

Mayor Johnson stated findings should be made for fifty-year leases.

The Interim City Manager continued the presentation.

Mayor Johnson inquired whether the proposed criteria checklist would include real property or other types as well.

The Interim City Manager responded the checklist would include anything defined as real property such as land and buildings; stated cars would not be included; a ten percent deferred maintenance reserve would be approximately \$22 million.

Councilmember Matarrese thanked staff for the report; stated the tie into disciplined funding is critical.

Vice Mayor deHaan stated other cities must have plowed through the issue before.

The Interim City Manager stated the proposed charge back model would be very different than what cities use.

Councilmember Tam stated the League of California Cities' Public Works Department has an asset management template policy; however, the policy deals with the public works angle for deferred maintenance and has been used to justify the gas tax; the Alameda County Planning Commission has an asset strategy that a community development group developed for all county assets; East Bay Municipal Utility District

(EBMUD) has an asset management department that deals with declaration of surplus property; a special district buys land and it changes hands because the property is not needed, is land locked, or there is not public interest; then, the land is disposed; a model threshold measures how much money is poured in for maintenance and how long the asset should last.

Mayor Johnson stated newer cities do not have as much deferred maintenance as older cities; cities would be in a better position if money is set aside; Alameda is in a better situation than other cities of a similar age.

Councilmember Matarrese stated a City-owned building is not free, but is a real cost for running the City; structural problems need to be fixed.

The Interim City Manager stated the matter would come back to Council on July 20th or July 27th; staff is starting at the core of City-owned assets; a file would be created; staff would look for every deed; Council would have the opportunity to apply the proposed policy independently to expired leases and other assets that should be reviewed.

AGENDA ITEMS

None.

COUNCIL REFERRAL

(10- CC) Discussion of Reconsidering the Council Action to Refer the Campaign Finance Reform Ordinance to the Sunshine Task Force.

Mayor Johnson gave a brief presentation.

Speakers: Gretchen Lipow, Chair Sunshine Task Force; Jon Spangler, Alameda; Jean Sweeney, Alameda; Karen Butter, League of Women Voters; Ashley Jones, Alameda; Rosemary McNally, Alameda; Aidan Barry, Alameda; and Jim Sweeney, Alameda.

Following Ms. Lipow's comments, Councilmember Gilmore inquired whether Ms. Lipow is speaking solely for herself.

Ms. Lipow responded in the affirmative; stated an Task Force meeting was held the next night [after the June 15th Council meeting]; the issue [campaign financing] was not on the agenda; the Sunshine Task Force discussed placing the issue on its July 17th agenda.

Councilmember Gilmore stated Ms. Lipow's email makes reference to Ms. Lipow considering stepping down from the Task Force; inquired whether the statement is accurate.

Ms. Lipow responded the Sunshine Task Force signed on to work on an ordinance and not campaign financing or lobbying; stated that she does not think she is qualified to address campaign financing.

Vice Mayor deHaan stated Council wanted certain things to go forward immediately; the confusion is that Council has remanded campaign financing back to the Sunshine Task Force; the confusion lies with Council.

Councilmember Gilmore stated that she is not confused; Council has discussed all the various issues; Councilmember Matarrese stated that he went to a Democratic Club meeting and people were not aware of Alameda's issue; that she and Councilmember Tam mentioned various issues within the ordinance specifically; she mentioned that the matter is a conflict of interest for the majority of Council and the matter should not be voted on and should not become effective until January 1, 2011; none of the issues have changed; the only new item of evidence is that Ms. Lipow sent an email speaking for herself and not speaking for the Sunshine Task Force; none of the underlining issues pointed out at the last meeting have changed; Ms. Lipow has the prerogative to step down; the Sunshine Task Force facilitator is a former Hayward City Attorney; the Sunshine Task Force has taken up the cause because the matter has been put on the July meeting agenda.

Vice Mayor deHaan stated that he disagrees with Councilmember Gilmore; Council discussed holding the Sunshine Task Force to two or three meetings; now, Council needs to give guidelines on what to do.

Ms. Lipow stated the Sunshine Task Force has never discussed the issue; that she does not know how other Task Force members feel about the issue; the Task Force is unclear about Council direction.

Mayor Johnson inquired whether Councilmembers considering a campaign finance reform ordinance would be a conflict of interest.

The Assistant City Attorney responded that she does not think there would be a conflict of interest under Fair Political Practices Commission rules.

Councilmember Gilmore stated five Councilmembers would be asked to make a decision that would potentially change rules in the middle of an election cycle; three Councilmembers have already declared to run in this election; the proposed change would affect everyone; people who have already declared to run and have raised money would have an advantage over people who enter the race after the ordinance passes but before the filing deadline; people would be running in the race under two separate set of rules; having people give back money raised before the ordinance is a different story.

Mayor Johnson stated the term “conflict of interest” has been thrown around loosely; the public needs to understand what is and is not a technical conflict of interest.

Councilmember Gilmore stated the conflict of interest may not be technical, but the actuality is that if the ordinance passes midstream, incumbents would get a practical advantage over non-incumbents in the upcoming election.

Councilmember Tam inquired whether Ms. Lipow shared her email with Task Force colleagues, to which Mr. Lipow responded in the negative.

Councilmember Tam inquired whether Ms. Lipow was present at the June 16th Task Force Meeting, to which Ms. Lipow responded in the affirmative.

Councilmember Tam stated the Sunshine Task Force Vice Chair stated “as the Council reaffirmed, the Task Force operates under the Brown Act and because we do, the campaign finance reform issue was not and could not be legally agendized at our meeting of Wednesday, June 16, 2010; however, the item was unanimously, and without concern, added to our July public workshop for full participation and discussion”; inquired whether Ms. Lipow expressed concern, to which Ms. Lipow responded in the affirmative.

Councilmember Tam inquired whether Ms. Lipow indicated to the Task Force that she did not feel that she was qualified to take on the project.

Ms. Lipow stated generally, she tends to do things when she sees things in writing; that her concern was with what Council was really saying and what Council wanted the Task Force to do.

Councilmember Tam stated that she understands the facilitator would be willing to step in and assume the responsibility of serving on the Task Force.

Ms. Lipow stated that she does not know how other Task Force members feel about the issue.

Mayor Johnson stated the intent of the Council Referral is not to debate the merits of campaign finance reform but to discuss the process of handling the matter; Council voted to send the matter to the Sunshine Task Force which might not be the right place; Council gave specific direction to the Sunshine Task Force; the Sunshine Task Force has had certain expectations of the commitment; that she thinks the matter should be brought back to Council for process discussion.

Vice Mayor deHaan stated discussions need to address whether the issue should be kept at Council level.

Councilmember Matarrese stated that he voted for the first reading in order to get things started; a void has occurred between the first and second reading; Council has been talking in a vacuum; that he does not see that anything has changed regarding setting maximum contribution limits; that he would like to hear what the Task Force has to say; the decision would be a Council vote; a broader hearing is needed.

Vice Mayor deHaan stated Council can have a broader hearing; Council would be shrugging its responsibility [by sending the matter to the Task Force]; Council can air the matter to the public; Council does not want a change in this election cycle; people want to keep things status quo during this election; that he is not asking people to refund money already raised; the contribution limit would be in effect once the ordinance is passed.

Councilmember Gilmore stated people who have already started raising money would be able to keep the money; people jumping into the race now would have a different set of rules if the ordinance becomes effective now; historically, finance limits tend to favor incumbents; non-incumbents would be put at a disadvantage; Council is not abdicating responsibility; Council needs to pass an ordinance; a lot of Councilmembers have volunteer treasurers; a treasurer only has three hours to file on the Friday before the election; the problem would be significant for a treasurer who has another job; that she is in favor of campaign reform and spending, but she thinks getting things right as opposed to fast is important; that she does not want the City to get sued and have to spend money defending a lawsuit.

Mayor Johnson stated the substance of campaign finance reform is not on the agenda; the issue is whether to bring the matter back for Council discussion so that another process could be considered.

Councilmember Gilmore inquired whether the only thing that prompted the Council Referral is the fact that the Sunshine Task Force Chair, speaking for herself, declared that she did not feel that she would be able to take on the task.

Mayor Johnson responded in the affirmative; stated in addition, the original direction given to the Sunshine Task Force was a much narrower task; stated the Sunshine Task Force signed on for one job and now Council is giving it more jobs to do; the matter needs to be reconsidered.

Following Mr. Sweeny's comments, Councilmember Tam inquired whether Mayor Johnson's concern is that the June 15th Council action did not provide enough direction to the Sunshine Task Force.

Mayor Johnson responded in the negative; stated the original Sunshine Task Force task has been greatly expanded by direction given at the last Council meeting; the mater

should be reconsidered.

Councilmember Gilmore inquired why; stated the majority of the Council gave the Sunshine Task Force a task.

Mayor Johnson stated the Sunshine Task Force Chair has expressed that she does not feel it is appropriate to send the matter to the Task Force.

Councilmember Tam stated Council would have the ultimate authority to pass the ordinance; that she polled the Task Force to get an understanding on whether the assignment was acceptable to the Task Force; the majority felt that the Task Force would take direction from Council; the Task Force would help facilitate a forum if Council wanted the Task Force to review the matter; that she does not see that the Sunshine Task Force is unwilling to accept the assignment.

Mayor Johnson stated Councilmember Tam polling the Sunshine Task Force might be a violation of the Brown Act since the matter is on the next Sunshine Task Force agenda; polling and developing a consensus of the majority of the Task Force is a violation of the Brown Act.

Councilmember Tam requested an explanation of the violation.

Mayor Johnson stated developing a consensus of Task Force members on an issue that would be on the next agenda.

Councilmember Tam stated that she asked an opinion of three members, two of which are on the Task Force and one is the facilitator; that she would like a City Attorney ruling if Mayor Johnson is accusing her of a Brown Act violation.

Mayor Johnson stated that she thinks Council is going beyond the intent of the referral; the intent of the referral is whether the matter should be brought back to Council to explore another avenue to review campaign reform.

Councilmember Matarrese stated that he does not think the matter should be brought back until Council hears from the Sunshine Task Force; that he does not want to go on hearsay; inquired whether the issue is out in the public.

The City Clerk responded after the last meeting, the Sunshine Task Force decided to call a Special Meeting on June 14th; the Chair agreed to call the meeting; now, the Task Force will be having another meeting on July 14th, prior to the July 17th meeting.

Councilmember Matarrese inquired whether the matter would be discussion on July 14th.

The Deputy City Manager – Administrative Services responded the July 14th meeting is for organizational purposes.

The City Clerk stated the item could be added to the agenda.

Councilmember Matarrese stated that he wants to hear back from the Sunshine Task Force with a recommendation.

The Interim City Manager inquired who places items on the agenda.

The Deputy City Manager – Administrative Services responded staff placed matters on the agenda at first; stated now, staff consults with the Chair to place items on the agenda.

Vice Mayor deHaan stated Council needs to explain what it wants and be specific about the change in direction; Council can choose to discuss the issue; the timeline should be put aside; feedback is needed from the public whether at a Council meeting or Sunshine Task Force meeting; the matter should be brought back for discussion and finalization and then figure out when the ordinance would go into effect; that he thinks accepting more than \$250 is unfair.

Mayor Johnson stated there is no reason not to continue to work in a diligent manner to get the job done; Council can choose to implement the ordinance when it chooses.

Councilmember Gilmore stated that she understands Council told the Sunshine Task Force that the matter could be brought back at any time, but the ordinance would not be effective until at least January 1st.

Mayor Johnson stated that she does not recall said direction; that she thinks the direction was to bring the matter back no sooner than January 1st; the facts will be checked.

Vice Mayor deHaan stated that he recalls that the matter would not be considered by Council until January.

The City Clerk stated the motion was to extend the period for public comment, including review by the Sunshine Task Force and League of Women Voters and that the ordinance not be effective until 2011.

Vice Mayor deHaan stated the issue is whether Council wants to task the Task Force to go forward; Council's obligation is to spell out what the Sunshine Task Force should do.

Councilmember Matarrese stated Council's obligation is whether to reconsider the vote taken last time; that his answer is no; he wants to hear back from the Sunshine Task

Force; direction can be given if feedback warrants reconsidering the vote.

Mayor Johnson stated consensus is to leave direction as is; that she is not sure how to get feedback from the Sunshine Task Force.

Ms. Lipow inquired whether Council wants the Task Force to use the ten-page on-line document, to which Councilmember Gilmore responded the document would be a start.

ADJOURNMENT

There being no further business, Mayor/Chair Johnson adjourned the meeting at 10:26 p.m.

Respectfully submitted,

Lara Weisiger, City Clerk
Secretary, APFA, CIC

The agenda for this meeting was posted in accordance with the Brown Act.

UNAPPROVED
MINUTES OF THE SPECIAL JOINT COMMUNITY
IMPROVEMENT COMMISSION (CIC) AND HOUSING
AUTHORITY BOARD OF COMMISSIONERS (HABOC) MEETING
TUESDAY- -JULY 6, 2010- -6:55 P.M.

Chair Johnson convened the meeting at 8:02 p.m. Commissioner Torrey led the Pledge of Allegiance.

ROLL CALL – Present: Commissioners deHaan, Gilmore, Matarrese, Tam, Torrey and Chair Johnson – 6.

Absent: None.

CONSENT CALENDAR

Chair Johnson announced that Resolution Amending the Rules and Procedures [paragraph no. HABOC] was removed from the Consent Calendar for discussion.

Commissioner Tam moved approval of the remainder of the Consent Calendar.

Commissioner deHaan seconded the motion, which carried by unanimous voice vote – 5. [Items so enacted or adopted are indicated by an asterisk preceding the paragraph number.]

(*HABOC) Recommendation to Approve the Minutes of the Special Board of Commissioners Meeting Held on April 6, 2010. Approved.

(*10- CIC/HABOC) Recommendation to Approve a Second Amendment to the Affordable Housing Agreement Between the Housing Authority and Community Improvement Commission Extending the Term of the Agreement Two Years to July 2026. Accepted.

(HABOC) Resolution No. 819, “Amending the Rules and Procedures of the Housing Authority, Effective January 1, 2010, Changing the Time to Start Regular Meetings of the Board of Commissioners to 6:55 P.M.” Adopted.

Commissioner Torrey questioned whether changing the starting time would be logical; stated City Council meetings are supposed to start at 7:00 p.m., but start much later.

The City Clerk stated that the 6:55 p.m. start time is being proposed in order to have the HABOC meetings before City Council meetings.

Chair Johnson stated the only other way would be to have HABOC meetings after City Council meetings, which would not be a good idea.

Commissioner Gilmore moved adoption of the resolution.

Commissioner deHaan seconded the motion, which carried by the following voice vote:
Ayes: Commissioners deHaan, Gilmore, Matarrese, Tam and Chair Johnson – 5.
Abstentions: Commissioner Torrey – 1.

AGENDA ITEMS

(HABOC) Recommendation to Award a Contract in the Amount of \$106,680, Including \$17,780 for Contingencies, to Replace the Brush Street Parking Lots at Esperanza to DRYCO Construction Inc., and to Authorize the Interim Executive Director to Execute the Contract.

Commissioner deHaan moved approval of the staff recommendation.

Commissioner Matarrese seconded the motion, which carried by unanimous voice vote – 6.

ADJOURNMENT

There being no further business, Chair Johnson adjourned the meeting at 8:05 p.m.

Respectfully submitted,

Lara Weisiger, Secretary
CIC

The agenda for this meeting was posted in accordance with the Brown Act.

CITY OF ALAMEDA

Memorandum

To: Honorable Mayor and
Members of the City Council

Honorable Chair and
Members of the Alameda Reuse and Redevelopment Authority

Honorable Chair and
Members of the Community Improvement Commission

From: Ann Marie Gallant
Interim City Manager/Interim Executive Director

Date: July 20, 2010

Re: Approve Resolution Denying SunCal's Modified Optional Entitlement
Application

BACKGROUND

On July 18, 2007, the Alameda Reuse and Redevelopment Authority (ARRA), Community Improvement Commission (CIC), and City of Alameda (together "Alameda") approved an Exclusive Negotiation Agreement (ENA) with SCC Alameda Point LLC (SunCal), for redevelopment of Alameda Point, approximately 918 acres of the former Naval Air Station Alameda (NAS Alameda). Subsequent to approval of the ENA, SunCal conducted technical infrastructure and engineering analyses and held several community workshops to inform the preparation of their plan for the site. Through this planning process, SunCal decided that a project consistent with Article XXVI of the City's Charter (Measure A), which restricts housing density in the City, would not be financially feasible for SunCal. This decision represented a change from the commitment SunCal made to Alameda to entitle a Measure A-compliant project in their response to Alameda's Request for Qualifications (RFQ) for a Master Developer for Alameda Point dated December 4, 2006, which served as the basis for SunCal's selection as Master Developer.

SunCal requested, and Alameda agreed, to amend the ENA by postponing various mandatory performance milestones (i.e., submission of a Development Concept, Infrastructure Plan, Business Plan, and Entitlement Application, including a Master Plan) by six months. The First Amendment to the ENA was executed in March 2008.

In October 2008, SunCal requested, and Alameda granted, a Second Amendment to the ENA to (1) transfer ownership interest in SCC Alameda Point LLC to a new entity; (2) create a process that allowed SunCal to pursue a ballot initiative for a non-Measure A-compliant land use entitlement at Alameda Point expected to occur at an election to be held in early November 2009; (3) extend the term of the ENA by one year to July 20,

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Honorable Chair and
Members of the Community Improvement Commission

2010; and (4) add a Finalized Navy Term Sheet (Navy Term Sheet) as a mandatory milestone to be achieved by July 31, 2009. The Navy Term Sheet was added to the ENA as a mandatory performance milestone in the Second Amendment to ensure that SunCal diligently pursued agreement with the ARRA on the economics of the project through a project proforma, as well as with both the ARRA and the Navy on the crucial terms of the conveyance agreement for Alameda Point, which would be substantially predicated on the project proforma. Without an understanding and agreement on the terms of conveyance, a negotiated DDA between SunCal and Alameda cannot be achieved. As permitted by the ENA, the Navy Term Sheet was administratively extended until July 20, 2010, the end of the ENA term.

The transfer of ownership interest was required by SunCal to incorporate D.E. Shaw, an investment firm located in New York, as an investment partner into a joint venture with SunCal. A joint venture with D.E. Shaw was requested by SunCal in order to facilitate the continued funding of the ENA entitlement process for Alameda Point. Since October 2008, SunCal or its affiliates have filed approximately thirty bankruptcy proceedings for individual SunCal entities, including a bankruptcy filing related to the redevelopment of the Oak Knoll Naval Hospital (Oak Knoll) in Oakland and another recent bankruptcy filing related to a 36,000-unit master planned community in Albuquerque, New Mexico. In some instances, the properties have been allowed to languish in a state of disrepair. In the case of Oak Knoll, when development came to an abrupt halt, public health and fire hazards (from asbestos and other hazardous substances and overgrown vegetation) were created from leaving behind 90 partly demolished buildings to be occupied by transients and abused by vandals.

Given SunCal's recent financial challenges, it is expected that SunCal's financial partner, D.E. Shaw, will be required to provide adequate guarantees for completion of the project. Section 3.6.4 of the ENA recognizes the importance of having a financially secure developer or developer partner for the Alameda Point project. Typically, where a project is to be developed by a single-asset entity, that entity's owners or financial partners would be expected to provide financial assurances and guarantees to ensure completion of the project. The need for such assurances is particularly evident in the case of a large, complex project involving redevelopment and reuse of a former military base, as is the case of Alameda Point. To date, SunCal has provided no assurance that D.E. Shaw (or other financial partner) would continue to fund the project or otherwise guarantee SunCal's performance.

Pursuant to the ENA, the ballot initiative was anticipated to occur at the general election held in early November 2009. The Second Amendment to the ENA provided that if the initiative failed at the November 2009 ballot, SunCal would be permitted to submit an

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Optional Entitlement Application (OEA) by January 15, 2010, approximately 60 days subsequent to the November 2009 election. This OEA would require a project consistent with the City Charter (Measure A compliant) that could be processed within the overall timeframe of the ENA. The amendment did not provide SunCal with the ability to pursue a second ballot initiative, nor did it contemplate extending the term of the ENA for processing of an OEA. The ENA intentionally provided SunCal with a limited number of opportunities to pursue entitlements for the project so that if SunCal was unable to achieve the required entitlements and associated mandatory milestones within the specified timeframe, Alameda could pursue other options. Alameda did not want to be committed beyond July 20, 2010 to a development entity that proved incapable of entitling the property, thus postponing indefinitely Alameda's ability to return NAS Alameda to productive use.

On March 26, 2009, SunCal submitted the Alameda Point Revitalization Initiative (Initiative) to the City. The Initiative included a Charter Amendment, General Plan Amendment, Zoning Amendment, Specific Plan and Development Agreement (DA), the details of which were not negotiated with Alameda. Although sufficient signatures were reportedly gathered by SunCal by June 2009, SunCal delayed submitting the signatures to the City until September 2009. On November 3, 2009, when the Initiative was determined to have qualified for the ballot, the City Council set a special election for February 2, 2010.

Prior to the February election, SunCal submitted an OEA on January 14, 2010, as permitted by the ENA. The OEA submitted by SunCal consisted of substantially the same land use plan and processes contained in the Initiative. On February 2, 2010, the Initiative failed at the polls with 85 percent of those participating in the election voting against the Initiative. On February 4, 2010, Alameda provided SunCal with a Notice of Default (NOD) stating that the OEA submitted by SunCal did not meet the requirements of the ENA because the OEA conflicts with the City Charter. The only way for the OEA to avoid conflicting with the City Charter was for SunCal to either submit a Density Bonus Application (DBA) for the project in compliance with the City's Density Bonus Ordinance, which SunCal did not do, or to seek an amendment to the City Charter through a second ballot initiative. However, the ENA affords SunCal no further opportunities to amend the City Charter through a second initiative.

Consistent with the terms of the ENA, SunCal had 30 business days, or not later than March 22, 2010, to cure the default. On March 22, 2010, SunCal submitted a Modified OEA in response to Alameda's NOD, which included a Measure A-compliant project (Base Project) that might be modified at a later date through a density bonus.

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Members of the Community Improvement Commission

At a meeting with Alameda staff, SunCal stated that no DBA would be submitted at this time consistent with the City's Density Bonus Ordinance, because the ordinance itself requires specific information, such as architectural elevations, which SunCal stated could not be provided at this stage in the planning process. However, SunCal indicated verbally its commitment to developing a higher-density project that would permit the land uses, units, and densities similar to those in the land use plan contained in the Initiative (Density Bonus Option), not the Base Project. SunCal also indicated that the Environmental Impact Report (EIR) and Disposition and Development Agreement (DDA) would include the Density Bonus Option. The Density Bonus Option is essentially the same land use program as the Initiative, with the exception of an increased amount of commercial development, one acre of additional park and the inclusion of sustainable uses, such as a solar farm, in the Northwest Territories. SunCal also committed to preparing a master-planned DBA at a future date to avoid a piecemeal approach to implementation of a higher density project under density bonus law.

On April 20, 2010, the City of Alameda provided SunCal with a letter identifying some of staff's major concerns with SunCal's current submittal. In response to the April 20, 2010 letter and staff's requests at weekly meetings, SunCal has provided various documents on the proposed Density Bonus Option to Alameda over the last several months, including a project proforma provided on April 26, 2010. Alameda also sent a letter to SunCal on May 19, 2010, stating that the Modified OEA was incomplete and requested that SunCal submit additional information on the Density Bonus Option with sufficient detail so that it can be reviewed and analyzed by staff and the EIR consultants, as well as the community, Planning Board, and Alameda at the same time as the Base Project.

On May 27, 2010, SunCal emailed a letter to the City's Planning and Building Department responding to the City's Notice of Incompleteness letter, including supplemental information to be processed as part of the Modified OEA and, on May 28, 2010, a letter to the Interim City Manager responding to Alameda's April 20, 2010 letter. Staff reviewed SunCal's response and met with SunCal on a weekly basis to address any remaining concerns regarding the completeness of the Modified OEA. Per the results of these discussions, and at staff's request, SunCal submitted, on June 24, 2010, a consolidation of all previous submittals related to the Density Bonus Option as well as additionally requested documentation concerning the Density Bonus Option. Based on a review of the initial Modified OEA provided on March 22, 2010, and all subsequent submittals through June 24, 2010, staff has determined the Modified OEA sufficiently complete for community, staff and City Council evaluation (Exhibit 1).

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Notwithstanding this “completeness” determination, staff continues to have concerns with respect to the SunCal Base Project and Density Bonus Option. SunCal has been working with Alameda for three years and has made limited progress on crucial aspects of the planning and entitlement of the Alameda Point project, regarding land use, transportation, economic development, sustainability and climate change, adaptive reuse and historic preservation, and affordable housing. These concerns were shared with the Planning Board on May 10, 2010 and May 24, 2010; also with the governing bodies of Alameda on May 18, 2010 and June 1, 2010 (Exhibits 2 and 3), and with the Economic Development Commission on May 20, 2010.

On June 1, 2010, the governing bodies of Alameda directed staff to set a public hearing date for a decision on the SunCal Modified OEA by July 20, 2010. That public hearing is scheduled for this evening. The governing bodies of Alameda at the June 1, 2010 meeting also raised questions regarding SunCal’s Modified OEA, including financial and transportation issues. The answers to these questions and staff’s continued concerns regarding SunCal’s Modified OEA were presented to the governing bodies at the July 7, 2010 meeting (Exhibit 4).

As discussed at these previous meetings, the term of the ENA between SunCal and Alameda expires on July 20, 2010, unless extended under a provision of the ENA, requiring SunCal to have satisfied the following two remaining mandatory milestones by July 20, 2010:

1. **Finalized Navy Term Sheet.** As discussed at the June 15, 2010 meeting (Exhibit 5), Alameda has not engaged the Navy in negotiations of the Navy Term Sheet related to the Modified OEA because of the need for a well-defined project description, a thoughtful phasing plan and a mutually agreed upon project proforma for the Density Bonus Option. As discussed at previous Alameda meetings, staff has serious concerns with key assumptions in the project proforma and could not negotiate the project’s ability to support a significant land payment to the Navy until these issues of financial infeasibility were resolved. As a result, the Navy Term Sheet was not agreed to by the Navy, Alameda, and SunCal and SunCal failed to satisfy the Navy Term Sheet mandatory performance milestone by July 20, 2010 per the ENA.

According to SunCal’s attorney, Louis R. Miller of Miller Barondess, in a letter sent to the Alameda City Council on July 12, 2010, SunCal asserts that it is entitled to an automatic extension because SunCal believes its efforts to achieve the Navy Term Sheet milestone were allegedly frustrated by staff (Exhibit 6). SunCal’s attorney sent a second letter on the same day containing various

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unfounded allegations regarding Interim City Manager, Ann Marie Gallant (Exhibit 7). Staff strongly disagrees with SunCal's assertions, and believes the ENA will terminate on July 20, 2010 for failure of SunCal to satisfy all of the mandatory milestones. However, even if the Navy Term Sheet milestone had been achieved and an automatic extension granted, the term of the ENA extends only until Alameda makes a final determination on the approvals requested in the Modified OEA; thus, a denial of the Modified OEA tonight by Alameda would result in termination of the ENA.

2. **Disposition and Development Agreement.** The DDA is the other remaining mandatory performance milestone that must be achieved by SunCal by July 20, 2010, pursuant to the ENA. SunCal can achieve the mandatory milestone for the DDA if both SunCal and Alameda agree on the form and substance of the DDA or if SunCal submits its best and final offer of a DDA acceptable to SunCal. On June 10, 2010, SunCal submitted a draft DDA (First Draft DDA) to staff (Exhibit 8). Although it was not complete, staff provided initial comments on the First Draft DDA to SunCal verbally at the June 17, 2010 and June 24, 2010 weekly meetings and in writing on July 2, 2010. Key provisions crucial to understanding SunCal's First Draft DDA were missing, including a schedule of performance, phasing plan, and profit participation. As a result, staff could not thoroughly and comprehensively evaluate SunCal's proposal, and staff and SunCal were not able to agree on the form and substance of the DDA by July 20, 2010. While SunCal has indicated to staff that it will be submitting its "best and final offer" before July 20, 2010, they had not yet done so, as of the writing of this staff report on July 14, 2010.

The ENA provides that if SunCal were to satisfy these two mandatory milestones by July 20, 2010, the ENA would automatically extend until such time as the City acted on the project: either by denying the Modified OEA (which action is exempt from CEQA and does not require an EIR), or certifying the pending EIR when it is complete and thereafter approving the Modified OEA. As described above, SunCal is not entitled to an automatic extension because it did not satisfy the Navy Term Sheet mandatory milestone by July 20, 2010, and, in any event the ENA will terminate according to its terms if Alameda denies the Modified OEA.

DISCUSSION

Staff is recommending that the governing boards of Alameda take a discretionary action this evening to approve a resolution denying SunCal's Modified OEA. Additionally, staff

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provides answers to specific questions raised by Alameda at the July 7, 2010 meeting and recommends next steps, if the resolution is approved.

I. Denial of SunCal Modified OEA

Project Description

As described above, the Modified OEA consists of both the Base Project and the Density Bonus Option.

The Base Project contained in the Modified OEA proposes a mixed-use land use program with residential, commercial, retail, hotel, civic, public trust, marina and parkland uses. The application requests text and map amendments to the City of Alameda General Plan, adoption of a new Alameda Point Community Plan, text and map amendments to the City of Alameda Zoning Ordinance, approval of an Alameda Point Master Plan and adoption of a DA pursuant to California Government Code sections 65864 *et seq.* These text and map amendments include a proposed new General Plan land use classification of "Alameda Point Master Plan" for the project site, and a rezoning of the project site to "MX, Mixed Use Planned Development District."

The Base Project consists of up to 3,712 residential units on the project site. The residential density across the project site would be generally limited to a maximum of 19 dwelling units per acre under the Alameda Point Master Plan, though SunCal reserves the right to request density transfers that would result in a maximum of 21 dwelling units per acre. Housing types would be limited to single-family, duplex, zero lot line single-family, and live-work units with the exception of 157 units of Alameda Housing Authority low-cost replacement housing units, which are planned to be constructed in an adaptively re-used building as multi-family units.

The terms of the First Draft DDA submitted by SunCal state that they will modify the Base Project at a future date by submitting an application for a density bonus in order to develop the Density Bonus Option. The Density Bonus Option could result in a project with up to 4,845 residential units. As requested by SunCal, the residential density across the project site would vary from 10 to 50 units per acre, but the average density of the project site would not exceed 29 units per acre. Blocks with the highest density would generally be clustered within a half-mile of the ferry terminal and transit hub. As shown in Table 1 below, the Density Bonus Option is substantially the same as the plan contained in the Initiative.

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TABLE 1
LAND USE PROGRAM COMPARISON

Land Use	Base Project	Density Bonus Option	Initiative
Residential (units)	3,712	4,845	4,841
Commercial (square feet)	4.57 million	4.57 million	3.79 million
Parks and Open Space (acres)	146	146	145

Findings for Denial

Staff is recommending denial of the SunCal Modified OEA for the following reasons:

- 1. Lack of Commitment to Mixed-Use Transit-Oriented Development.** While the SunCal Modified OEA proposes a vision of mixed-use transit-oriented development (TOD), there are no commitments in the Modified OEA or in the draft DDA that require SunCal to build a mixed-use transit-oriented project. Mixed-use transit-oriented development is a consistently stated goal in Alameda's land use plans and policies for Alameda Point, including in the Community Reuse Plan (1996), General Plan Amendment (2003), and Preliminary Development Concept (2006). The SunCal Modified OEA provides a cap on the total residential and commercial development, but does not commit SunCal to any minimum amount of either residential or commercial development or specify what type of commercial development will occur. For example, under the Modified OEA, SunCal could build 4,845 units without any commercial square footage. Alternatively, SunCal could build the low-density areas, but never build the high-density, mixed-use area near the transit hub. As described below, this also has serious implications for the economic development and transportation challenges facing Alameda. Further information is provided in the May 18, 2010 Staff Report (Exhibit 2).
- 2. Jobs/Housing Imbalance.** As indicated above, SunCal's Modified OEA does not commit to developing a balance of jobs and housing by phase or at buildout. A balance of jobs and housing at Alameda Point is not only crucial for the achievement of Alameda's stated economic development goals for Alameda Point -- the replacement of the jobs lost when the United States Navy closed the

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base -- but also for the success of the proposed transportation strategy. The phasing plan outlined in Tab G of the June 24, 2010 Density Bonus submittal contained in the Modified OEA proposes that 50 percent, or 2.3 million square feet of the commercial development be within Phases 4 and 5, estimated to commence in 2025. However, minimizing the severity of both short-term and long-term traffic impacts associated with development at Alameda Point will depend on establishing an appropriate balance – both in timing and amount – between residential and commercial uses. Carefully timed commercial development is key to developing job-generating uses that will allow for the internal capture of vehicle trips by people who both live and work at Alameda Point. Traffic impacts will be worse than expected if jobs are not generated, or if future phases of residential development are allowed to commence without a corresponding increase in jobs. Further information is provided in the May 18, 2010 Staff Report (Exhibit 2).

3. **Need for Economic Development Strategy.** The Modified OEA has no economic development strategy or commercial business plan; it provides a development envelope for commercial buildings, and a list of permitted and conditionally permitted non-residential uses, but no requirement that this development occur and no plan for attracting commercial uses. Recently, at staff's insistence SunCal verbally committed to retaining an economic consultant to prepare a commercial market study. Staff has requested a copy of SunCal's final scope of work for the consultant, but has not yet received a copy. As discussed above, for the redevelopment of a mixed-use community at Alameda Point to be successful, the Modified OEA must include a thoughtful economic development strategy and commercial business plan. The economic strategy should not be an afterthought or a simple zoning designation; it needs to be an integral part of the overall plan. Further information is provided in the May 18, 2010 and June 1, 2010 Staff Reports (Exhibits 2 and 3).
4. **Traffic Impacts.** Numerous studies have been conducted on the traffic impacts associated with development at Alameda Point, as described at previous meetings. Based on these previous studies, it can be determined that the Modified OEA will result in significant traffic impacts to the Webster and Posey Tubes and to intersections in Alameda and Oakland. For example, the EIR for the Alameda Point General Plan Amendment (2003) identified significant traffic impacts to two intersections in Oakland and the Posey Tube for a mixed land use proposal that included approximately 50 percent less housing units (1,928 units) and approximately 50 percent less commercial development (2.3 million square feet of commercial) than SunCal's Modified OEA. Funding and implementation of

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a forward-thinking transportation strategy and key transportation improvements will minimize these traffic impacts, but not eliminate them. Additionally, the ability of the Modified OEA to fund the capital and operational costs associated with the required Alameda Point transportation strategy and mitigation measures will depend on the feasibility of the project, as described in greater detail below. Further information is provided in the May 18, 2010, June 1, 2010 and July 7, 2010 Staff Reports (Exhibits 2, 3, and 4).

5. **Impacts to Endangered Species.** One of the last habitats for the endangered, California Least Tern, is located on the former runways of Alameda Point. All previous plans and policies for Alameda Point have endorsed the protection of the least tern habitat at Alameda Point consistent with the recommendations of the United States Fish and Wildlife Service (USFWS), as determined by their 1999 Biological Opinion (BO). According to the USFWS BO, a portion along the western edge of the master-developer footprint (Buffer Zone) should not include buildings and residential uses that will result in potential noise, lighting, and predator impacts to the endangered birds and their fledglings. The Modified OEA proposes to build homes in this Buffer Zone, which is inconsistent with the BO. Staff does not recommend a plan for Alameda Point that proposes residential uses in the Buffer Zone. Further information is provided in the May 18, 2010 Staff Report (Exhibit 2).
6. **Risk of Project Infeasibility and Adverse Outcomes.** Alameda staff contracted with the real estate economics consulting firm that has been working on this project for many years, Economic & Planning Systems (EPS), to evaluate SunCal's project proforma for the Density Bonus Option. The results of their evaluation are summarized in several reports prepared by EPS regarding the market, fiscal and financial assumptions in the SunCal project proforma that have been presented to the governing bodies of Alameda at previous meetings. Overall, EPS and staff believe that the assumptions in SunCal's project proforma do not take into account significant changes in the real estate market since 2006, overestimate project revenues, and underestimate project costs.

EPS conducted a financial feasibility analysis that used more realistic market assumptions than those assumed in the SunCal project pro forma, which resulted in an internal rate of return (IRR) of approximately negative 12 percent compared to a positive 20 percent in the SunCal project proforma. EPS also performed a sensitivity analysis to test the implications for project feasibility if the market experiences stronger than expected recovery and/or commands higher than projected prices, premiums, and construction costs, as envisioned by SunCal's

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project proforma. The sensitivity analysis results in an IRR of positive 14 percent, still well below SunCal's stated IRR requirement for the Alameda Point project of between 20 percent to 25 percent per the ENA.

Additionally, these findings assume that SunCal will be entitled to 100 percent of the housing and non-housing redevelopment tax increment generated by the project, or approximately \$212 million, an assumption that may not be realistic given the potential for future State takeaways from local redevelopment agencies and discretionary policy decisions that have yet to be made by the governing bodies of Alameda. As described in greater detail below, the reduction or elimination of non-housing tax increment funds from the financial feasibility analysis has a further adverse impact on project feasibility.

These results raise serious concerns about the feasibility of SunCal's Modified OEA. Moving forward on a project that is financially underwritten based on overly optimistic assumptions exposes both the City and SunCal to significant risks including the potential for "land banking" by SunCal, an incomplete project or a final project with unfulfilled commitments to fiscal neutrality, transportation improvements, and public benefits. These risks appear even more significant in light of SunCal's or its affiliates' recent bankruptcies and lack of financial assurances.

In sum, there is considerable risk that the Modified OEA will not be able to support the proposed transportation improvements and program, public benefits, and fiscal neutrality, as well as a significant land payment to the Navy. Further information provided in the June 1, 2010, June 15, 2010 and July 7, 2010 Staff Reports (Exhibits 2, 3, and 4).

7. **Lack of Community Support.** The Modified OEA consists of a land use program that is substantially the same as the land use plan contained in the SunCal Initiative, which failed at the polls with 85 percent of those participating in the election voting against it. This failure signifies a lack of community support for the Modified OEA.

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II. Responses to Questions from Alameda's July 7, 2010 Meeting

- 1. What effect does a reduction or elimination of redevelopment property tax increment have on EPS's financial feasibility analysis?*

As described above, EPS prepared a financial feasibility analysis for the Modified OEA assuming more realistic market assumptions than the SunCal project proforma, which resulted in an approximate IRR of negative 12 percent (Base Case). EPS also ran sensitivities assuming the market recovered more quickly than expected, resulting in a 14 percent IRR (Sensitivity Case). Both the Base Case and the Sensitivity Case assume that SunCal will be entitled to 100 percent of the housing and non-housing redevelopment tax increment generated by the project, or approximately \$212 million, which, for the reasons discussed above, may not be realistic.

Per questions raised at the July 7, 2010 meeting of the governing bodies of Alameda, EPS ran additional sensitivities on the impact to project feasibility of the amount of redevelopment tax increment provided to the project. The three scenarios assume zero, 50 percent and 80 percent of non-housing tax increment, and 100 percent of the tax increment housing set-aside funds are committed to the project for both the Base Case and Sensitivity Case.

Table 2
Alameda Point Redevelopment Tax Increment Sensitivity Summary

Item	Base Case	Sensitivity Case
Original IRR (100% of Non-Housing TI)	-11.9%	14%
New IRR		
Option A (0% of Non-Housing TI)	-24.4%	5.4%
Option B (50% of Non-Housing TI)	-17.6%	10%
Option C (80% of Non-Housing TI)	-14.1%	12.5%

- 2. How much private financing does SunCal's project proforma assume is required to achieve a 20 percent Internal Rate of Return?*

According to SunCal's project proforma, a maximum cash flow shortfall of \$165 million in 2013 would need to be financed with private debt and equity funding sources. This assumes that all future expenses would be covered by future surpluses from land sale and other projects revenues. Again, this assumes that

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SunCal will be entitled to 100 percent of the housing and non-housing redevelopment tax increment generated by the project.

3. *What is the status of SunCal's negotiations with Alameda Unified School District regarding impacts to schools?*

SunCal did not respond to a request by staff to provide a status report on negotiations with Alameda Unified School District regarding school impacts.

4. *What is the status of SunCal's commercial market study?*

SunCal did not respond to a request by staff to provide a status report on SunCal's commercial market study.

5. *What are examples of "Transit Town Centers," as defined by the Center for Transit-Oriented Development (TOD)?*

Due to the size of the Alameda Point development and the emphasis on ferry and Bus Rapid Transit there are no directly comparable TOD developments. The Center for Transit-Oriented Development cites Suisun City as a Bay Area example of a Transit Town Center, and the Hercules Bayfront/New Town Center developments in Hercules is another example. While TOD successes in the Bay Area include the Contra Costa Center Transit Village in Pleasant Hill, the Fruitvale Transit Village in Oakland, and Bay Meadows in San Mateo, these developments are not directly comparable as they are served by rail and typically have 15-minutes headways during peak commute hours.

III. Recommended Next Steps

Should SunCal's Modified OEA be denied, staff will proceed with a "moving forward" process to include, at minimum:

1. Assessment of all prior plans previously submitted, evaluating strengths and weaknesses;
2. Community forums and outreach to determine "lessons learned";
3. Stakeholder sessions with existing tenants/residents at Alameda Point;
4. Critical path for revised and updated vision for Alameda Point, given the present

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and future state of the development financing market;

5. Evaluation of land use, transportation, environmental and other documents in order to garner technical information of value in future site planning;
6. Recommendation on a "moving forward" Alameda Point Project Team and organizational structure; and
7. Re-establishing a property conveyance plan with the U.S. Navy and agreement on a Public Trust Exchange with State Lands Commission.

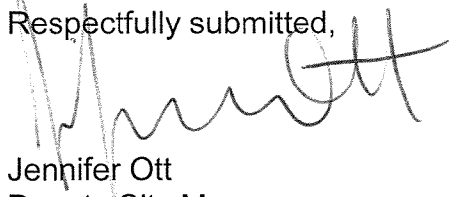
FINANCIAL IMPACT

The ENA currently reimburses Alameda for staff and third-party consultant costs. If the ENA expires, project costs will be borne by the ARRA. The ARRA budget currently designates funds to cover certain staff and consultant costs related to redevelopment of Alameda Point for the upcoming fiscal year. If staff recommend a "moving-forward" plan to the governing bodies of Alameda in September, it will also recommend an associated budget and any required budget amendments, if necessary.

RECOMMENDATION

Approve resolution denying SunCal's Modified OEA.

Respectfully submitted,



Jennifer Ott
Deputy City Manager

JO:dl

Exhibits:

1. Modified Optional Entitlement Application -- on file in City Clerk's Office
2. May 18, 2010 Staff Report (without attachments) -- complete Staff Report with attachments on file in City Clerk's Office
3. June 1, 2010 Staff Report (without attachments) -- complete Staff Report with attachments on file in City Clerk's Office

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4. July 7, 2010 Staff Report (without attachments) – complete Staff Report with attachments on file in City Clerk's Office
5. June 15, 2010 Staff Report (without attachments) – complete Staff Report with attachments on file in City Clerk's Office
6. Letter from SunCal attorney, Louis R. Miller of Miller Barondess, to the Alameda City Council on July 12, 2010 regarding Extension of ENA
7. Letter from SunCal attorney, Louis R. Miller of Miller Barondess, to the Alameda City Council on July 12, 2010 regarding Ann Marie Gallant
8. First Draft Disposition and Development Agreement Submitted by SunCal Dated June 10, 2010 -- on file in City Clerk's Office

CITY OF ALAMEDA

Memorandum

To: Honorable Mayor and
Members of the City Council

Honorable Chair and
Members of the Alameda Reuse and Redevelopment Authority

Honorable Chair and
Members of the Community Improvement Commission

From: Ann Marie Gallant
Interim City Manager/Interim Executive Director

Date: May 18, 2010

Re: Review and Accept Presentation on SunCal Modified Optional
Entitlement Application

BACKGROUND

In 2006, the ARRA funded and prepared a Preliminary Development Concept (PDC) for Alameda Point, approximately 918 acres of the former Naval Air Station Alameda. The PDC presented a conceptual development plan designed to facilitate the redevelopment and reuse of Alameda Point consistent with the 1996 Naval Air Station Community Reuse Plan and the 2003 City of Alameda General Plan Amendment for Alameda Point. The PDC acknowledged that the effort was "preliminary" and "conceptual" and that a series of complex planning studies requiring significant funds and time would be needed to resolve numerous issues before entitlement could occur. While the master developer at the time the ARRA finalized the PDC elected not to proceed with the redevelopment of Alameda Point, the ARRA decided to select a new master developer through a competitive process to provide the expertise, experience, and financial resources to overcome the remaining planning challenges and to entitle and redevelop Alameda Point.

On July 18, 2007, the governing bodies of the Alameda Reuse and Redevelopment Authority (ARRA), Community Improvement Commission (CIC), and City of Alameda (together "Alameda") approved an Exclusive Negotiation Agreement (ENA) with SCC Alameda Point LLC (SunCal), as the Master Developer for the redevelopment of Alameda Point. Subsequent to approval of the ENA, SunCal conducted technical infrastructure and engineering analyses and held several community workshops to inform the preparation of their plan for the site. Through this planning process, SunCal decided that a project consistent with Article XXVI of the City's Charter (Measure A), which restricts housing density and prohibits multifamily housing in the City, would not be financially feasible.

CC/ARRA/CIC
Exhibit 2 to
Agenda Item #3-A
07-20-10

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SunCal requested, and Alameda agreed, to amend the ENA by postponing various mandatory performance milestones (i.e., submission of a Development Concept, Infrastructure Plan, Business Plan, and Entitlement Application, including a Master Plan) by six months. The First Amendment to the ENA was executed in March 2008.

In October 2008, SunCal requested, and Alameda granted, a Second Amendment to the ENA to (1) transfer ownership interest in SCC Alameda Point LLC to a new entity; (2) create a process that allowed SunCal to pursue a ballot initiative for a non-Measure A-compliant land use entitlement at Alameda Point; and (3) extend the term of the ENA by one year to July 2010. The ballot initiative was to occur at an election to be held in early November 2009.

The amendment provided that if the initiative failed at the November 2009 ballot, SunCal would be permitted to submit an Optional Entitlement Application (OEA) by January 15, 2010, approximately 60 days subsequent to the November 2009 election. This OEA would require a project consistent with the City Charter (Measure A compliant) that could be processed within the overall timeframe of the ENA. The amendment did *not* provide SunCal with the ability to pursue a second ballot initiative, *nor* did it contemplate extending the term of the ENA for processing of an OEA.

In December 2008, SunCal submitted to Alameda an Entitlement Application, including a Master Plan, Infrastructure Plan and Business Plan, in accordance with the ENA. The December 2008 Master Plan was reviewed by Alameda, as well as numerous City boards and commissions, but could not be formally accepted because it was inconsistent with the City's Charter, and an Environmental Impact Report (EIR) had not been completed. The Master Plan did not propose specific development standards for the project nor modifications to the City's development procedures, processes or fee structure.

On March 26, 2009, SunCal submitted the Alameda Point Revitalization Initiative (Initiative) to the City. The Initiative included a Charter Amendment, General Plan Amendment, Zoning Amendment, Specific Plan and Development Agreement (DA), the details of which were not negotiated with Alameda. The Specific Plan contained specific development standards, procedures, and processes that differed from standard processes prescribed by the Alameda Municipal Code (AMC); the DA also included fee waivers inconsistent with the AMC and financial provisions that were not negotiated with Alameda. Signatures were collected by SunCal through early June, but not submitted to Alameda until September 23, 2009, later than originally anticipated by the process contemplated in the Second Amendment to the ENA. As a result, the Initiative did not qualify in time for a November 2009 special election. Rather, on November 3, 2009,

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when the Initiative was determined to have qualified for the ballot, the City Council set the election for February 2, 2010.

Prior to the February election, SunCal submitted an OEA on January 14, 2010 as permitted by the ENA. The OEA submitted by SunCal consisted of substantially the same plan and processes contained in the Initiative. On February 2, 2010, the Initiative failed at the polls with 85 percent of those participating in the election voting against the Initiative. On February 4, 2010, Alameda provided SunCal with a Notice of Default (NOD) stating that the OEA submitted by SunCal did not meet the requirements of the ENA because the OEA conflicts with the City Charter. The only way for the OEA to avoid conflicting with the City Charter was for SunCal to either submit a Density Bonus Application for the project in compliance with the City's Density Bonus Ordinance, which SunCal did not do, or to seek an amendment to the City Charter through a second ballot initiative. However, the ENA affords SunCal no further opportunities to amend the City Charter.

Consistent with the terms of the ENA, SunCal had 30 business days, or not later than March 22, 2010, to cure the default. On March 22, 2010, SunCal submitted a Modified OEA in response to Alameda's NOD, which included a Measure A-compliant project (Base Project) that might be modified at a later date through a density bonus (see Chapter 9 (Plan Review) of the Master Plan submitted as part of the Modified OEA). The following chronology outlines SunCal's evolving characterization of the project description contained in the Modified OEA:

- **March 25, 2010.** At a meeting with Alameda staff, SunCal stated that they were not going to submit a density bonus application at this time, but would like for the EIR and Disposition and Development Agreement (DDA) to contemplate a higher-density project that would qualify for a density bonus under the City's Density Bonus Ordinance. Alameda requested a letter from SunCal describing this proposed scenario. SunCal was not certain at this time whether their proposed higher density option would be achieved through a subsequent master-planned density bonus application submitted by SunCal or through piecemeal density bonus applications from individual vertical builders.
- **April 1, 2010.** At a meeting with Alameda staff, SunCal indicated it wanted to negotiate provisions in the DDA and DA that provide SunCal with an option at an unspecified later date to apply for a density bonus that will permit the land uses, units, and density similar to the Specific Plan contained in the Initiative (Density Bonus Option). SunCal requested the EIR study the impacts of both the Base Project and the Density Bonus Option. If the Density Bonus Option were later

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pursued by SunCal, SunCal committed to preparing a master-planned density bonus application to avoid a piecemeal approach to implementation of a higher density project under density bonus law.

- **April 8, 2010.** At a meeting with Alameda staff, SunCal further described the Base Project and Density Bonus Option and how the Density Bonus Option compared to the development plan contained in the Initiative. SunCal explained that the Density Bonus Option is essentially the same land use program with the exception of an increased amount of commercial development and acre of additional park and sustainable uses, such as a solar farm, in the Northwest Territories. It was proposed that the EIR would study both scenarios. Staff concurred with this approach; however, staff also reiterated that SunCal must provide more concrete information about the Density Bonus Option so that staff could formulate a Notice of Preparation for the EIR. SunCal agreed to write a letter describing SunCal's approach to the Base Project and Density Bonus Option.
- **April 13, 2010.** SunCal submitted a three-page letter to Alameda regarding the Alameda Point CEQA Project Description. (Exhibit 1 to this report) It included a brief description of the Base Project as provided in the Modified OEA that may be altered at an unspecified future date by SunCal to pursue the Density Bonus Option. As submitted, SunCal reserved the right to choose whether to pursue the Base Project or the Density Bonus Option, but stated that it is likely that in the future a density bonus will be requested in connection with the development of the project.
- **April 15, 2010.** At a meeting with Alameda staff and the EIR consultant in preparation of the Notice of Preparation for the Planning Board EIR scoping session on May 10, 2010, SunCal further elaborated on the land use differences between the Base Project and Density Bonus Option, as well as the differences between the Density Bonus Option and the development plan contained in the Initiative. On April 19th, SunCal provided two revised maps showing the plans for Alameda Point under the Base Project and the Density Bonus Option. (See Exhibit 2 *Figures 1 and 2*.) On April 20, 2010, the City of Alameda provided SunCal with a letter identifying some of staff's major concerns with SunCal's current submittal. (See Exhibit 3)
- **April 22, 2010.** At a meeting with Alameda staff, SunCal confirmed that they are likely to pursue a Density Bonus Option, but will not submit a formal Density Bonus Application (DBA) consistent with the City's Density Bonus Ordinance

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because the ordinance requires specific information, such as elevations, which cannot be provided at this stage of the planning process.

- **April 29, 2010.** At a meeting with SunCal, Alameda staff provided feedback to SunCal on the Modified OEA, stating that they would not recommend an arrangement where SunCal was not committing to a particular project (i.e., Base Project vs. Density Bonus Option). In response, SunCal verbally committed to pursue the Density Bonus Option rather than the Base Project, if procedural issues could be resolved regarding the requirements of the DBA process. To date, SunCal has provided minimal information on the proposed Density Bonus Option. Alameda has requested that SunCal submit additional documentation on the Density Bonus Option with sufficient detail so that it can be reviewed and analyzed by staff and the EIR consultants, as well as the community, Planning Board, and Alameda at the same time as the Base Project.
- **May 10, 2010.** The Planning Board held both a scoping session for the EIR and a public hearing on the SunCal Modified OEA. Draft minutes from the meeting are attached (See Exhibit 4). At the meeting, the Planning Board heard public comment on the SunCal item, completed the scoping session part of the meeting. The Planning Board then began to provide comments on the Modified OEA. The meeting was continued to the May 24, 2010 meeting so that the Planning Board could study the Modified OEA more thoroughly and have time to provide additional comments. Numerous members of the community provided public comment at the meeting, most of whom expressed concerns about similarities between the SunCal Modified OEA and Measure B and about a perceived lack of certainty and upfront commitments in the Modified OEA. Some of the initial Planning Board comments about the Modified OEA included the desire for:
 - 1) a better understanding of what the community will receive in land uses, transportation improvements and public benefits phase by phase;
 - 2) more specific guidelines to help ensure that the community knows what the development will look and feel like;
 - 3) more ground-floor retail along Seaplane Lagoon frontage;
 - 4) more specific plans for the Northwest Territories;

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- 5) a determination of what is an appropriate balance between jobs and housing;
- 6) protections for the endangered California Least Tern;
- 7) further analysis on historic preservation; and
- 8) the transportation plan to be a part of project, not just an environmental mitigation.

In sum, the Modified OEA submitted by SunCal addressed their default under the ENA, while preserving the opportunity to pursue a density bonus. SunCal has since communicated that its desire is to entitle a Density Bonus Option that is substantially similar to the development plan contained in the Initiative. While the Modified OEA technically cured SunCal's default, staff continues to have numerous concerns with the SunCal plan, including both the Base Project and the Density Bonus Option, as discussed below, and therefore the Modified OEA is not yet considered a "complete application."

DISCUSSION

I. Project Description

The Base Project contained in the Modified OEA proposes a mixed-use land use program with residential, commercial, retail, hotel, civic, public trust, marina and parkland uses. The application requests text and map amendments to the City of Alameda General Plan, adoption of a new *Alameda Point Community Plan*, text and map amendments to the City of Alameda Zoning Ordinance, approval of an *Alameda Point Master Plan* (Exhibit 5 to this report), and adoption of a DA pursuant to California Government Code sections 65864 *et seq.*. These text and map amendments include a proposed new General Plan land use classification of "Alameda Point Master Plan" for the project site, and a rezoning of the project site to "MX, Mixed Use Planned Development District." The proposed development program set forth in the Modified OEA is described and illustrated on Figure 1, Alameda Point Base Project, and is referred to as the "Base Project."

The Base Project consists of up to 3,712 residential units on the project site. The residential density across the project site would be generally limited to a maximum of 19 dwelling units per acre under the Alameda Point Master Plan, though SunCal reserves the right to request density transfers that would result in up to a maximum of 21 dwelling

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units per acre. Housing types would be limited to single-family, duplex, zero lot line single-family, and live-work units with the exception of 157 units of Alameda Housing Authority low-cost replacement housing units (Guyton Units), which are planned to be constructed in an adaptively re-used building as multi-family units.

SunCal has proposed that under the terms of the yet to be negotiated DDA, SunCal will have the option to modify the Base Project at a future date by submitting an application for a density bonus and a more comprehensive density transfer program, referred to as the "Density Bonus Option." The Density Bonus Option would allow an increased number of residential units at a higher residential density, as described and illustrated on Figure 2, Alameda Point Density Bonus Option.

The Density Bonus Option could result in a project with up to 4,845 residential units by transferring density among blocks within the plan area. The residential density across the project site would vary. For example, some blocks could be reduced to an average of 10 dwelling units per acre, while others would increase to an average of 50 dwelling units per acre. Blocks with the highest density would generally be located within a quarter-mile to half-mile of the ferry terminal and transit hub. However, no minimum densities are provided. As shown in Table 1 below, the Density Bonus Option is very similar to the plan contained in the Initiative, and SunCal has made it clear in conversations with City staff on April 29, 2010 that the Density Bonus Option represents the plan that SunCal wants to pursue.

TABLE 1
LAND USE PROGRAM COMPARISON

Land Use	Base Project	Density Bonus Option	Initiative
Residential (units)	3,712	4, 845	4, 841
Commercial (square feet)	4.57 million	4.57 million	3.79 million
Parks and Open Space (acres)	146	146	145

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II. Evaluation of SunCal Modified OEA

The following comments regarding the Modified OEA reflect many of the same issues raised by Alameda staff in 2008 regarding the December 2008 Master Plan and in 2009 regarding to development plan contained in the Initiative.

Land Use Plan

Previous community planning efforts including the 1996 Community Reuse Plan, the 2003 General Plan Amendment and the 2006 PDC have consistently reinforced the importance of ensuring that the redevelopment of Alameda Point reflects the design, architectural character, and mix of uses that are found in the rest of Alameda. The community of Alameda has consistently requested a plan that provides certainty that future development will meet their expectations and objectives for Alameda Point.

The Modified OEA provides little certainty about how the property will eventually be developed, especially given SunCal's request to develop the Density Bonus Option, the details of which are not described at all in the Modified OEA. Many decisions about site design, architectural character, the transportation system, and the sustainability program for the Base Project are postponed to a later date. Many of these decisions are proposed to occur after the Modified OEA is adopted by the City. The Modified OEA ensures maximum flexibility for future developers of Alameda Point to respond to future market conditions and avoids or delays commitments regarding specific land uses, design requirements, services, or operations. While a certain amount of flexibility is reasonable to enable the Master Developer and vertical builders to respond to changing market conditions, the Modified OEA does not provide the upfront commitments regarding the actual project SunCal intends to develop that the community and staff have expected.

For example, the Modified OEA provides minimal certainty regarding what types of land uses will actually occur at Alameda Point. The land use categories in Chapter 3 (Land Use) of the Modified OEA (see page 3-6 for an example) reference a number of existing City of Alameda zoning districts and allow any and all uses that are allowed in those districts in the future land use districts at Alameda Point. Chapter 3 also includes an extensive table of uses that further expands the uses that would be allowed in each Alameda Point district.

Additionally, Chapter 7 (Development Standards and Guidelines) includes a limited set of development standards and design guidelines for future development. The Master Plan establishes four housing types that could be developed at Alameda Point. All four

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types have a minimum lot size of 2,000 square feet, a three-story height limit, a minimum 3-foot rear setback, and no side setback. Therefore, any proposed residential lot in the project that meets these four basic standards would be permissible on any lot thereby providing maximum flexibility to future developers. For non-residential development, the standards are even less specific. For non-residential development, the plan provides only two classifications of development: mixed use and commercial. Each classification is governed only by a floor-area-ratio, a height limit and a front setback requirement (see Table page 7-1).

While the Modified OEA includes design guidelines for the Base Project, they are vague and not sufficiently comprehensive or prescriptive for a project of this size. For example, the design guidelines for the Commercial, Business Park and Mixed-Use areas, which comprises over 280 acres and approximately 4.7 million square feet of future buildings, are only two and a half-pages (see pages 7-18 through 7-20).

Staff has verbally shared these concerns in recent meetings with SunCal. SunCal has responded by stating it proposes to postpone decisions about design, lot configuration, and other important character-defining decisions until after the Modified OEA is approved, but before any buildings or subdivisions are approved. Staff agrees that the City's design review and subdivision review and approval processes can and should be used to ensure quality design at Alameda Point. However, staff also maintains that those processes should be informed and guided by a comprehensive set of detailed and specific development and design standards and drawings so that the community can feel confident that the development will meet their expectations before Alameda approves an entitlement application for the project.

Transportation Plan

The redevelopment of Alameda Point presents an opportunity to create a transportation system that not only serves future residents and employees at Alameda Point, but also improves the citywide transportation system for all residents of Alameda. The transportation plan for Alameda Point is a critical component of the project, arguably as important as the land use plan. Land use and transportation must be two equal parts of a whole plan for Alameda Point given the transportation constraints confronted by Alameda, as an island city.

The 1996 Community Reuse Plan and the 2003 General Plan Amendment identify transportation as one of the greatest constraints affecting redevelopment of Alameda Point. The PDC also included a conceptual and relatively innovative transportation strategy for Alameda Point, but many questions, details, and issues remained

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unresolved. The questions raised by the PDC remain unanswered by the Modified OEA and need to be answered to assure the community that the Alameda Point transportation strategy will be effective and financially viable.

Chapter 5 of the Modified OEA (Transportation, Circulation and Parking) is essentially the conceptual transportation strategy contained in the 2006 PDC. The Modified OEA, as well as SunCal's previous planning documents, have done little to advance these previous efforts.

For example, both the 2006 PDC and the Modified OEA call for a Bus Rapid Transit (BRT) system serving 12th Street and Fruitvale Bay Area Rapid Transit stations. The proposed BRT improvements and service are likely to be crucial in ensuring that the final phases of the project are completed. However, the Modified OEA has made little to no progress answering any of the following questions regarding BRT that were raised in 2006:

1. What is the preferred alignment of the system? Should it be on Clement Street, Lincoln, Santa Clara, or Pacific Avenues?
2. Where will dedicated lanes be located? Where will queue jump lanes be possible? Will the system require removal of on-street parking? If so, how much and where?
3. How will the BRT system operate in Oakland? Where will the lanes be situated? What do the Chinatown and Fruitvale communities think about the plans? What steps have been taken or will be taken to ensure compliance with the Agreement between the City of Alameda, City of Oakland, Oakland Chinatown Chamber of Commerce and Asian Health Services regarding cooperation to study and mitigate traffic and related impacts in Alameda, Oakland, and Oakland Chinatown?
4. What entity will operate the system? The project, the City, a private operator, or AC Transit? What does AC Transit think about the plans?
5. What is the system going to cost to operate? Will the project fund 100% of the operating costs? How do non-Alameda Point residents use the system?
6. How will the "eco-pass" program work? What services will the eco-pass cover? What are the potential costs of the program?

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Rather than presenting a fully developed and detailed transportation plan to complement the land use plan, the transportation chapter in the Modified OEA is structured as a mitigation plan for the land use plan. Therefore, the Modified OEA proposes to postpone addressing the complex transportation issues until after the EIR is completed and the Modified OEA and DDA are approved. According to the Modified OEA, a Transportation Demand Management Plan will be prepared, but that will occur after the EIR is complete and after the Modified OEA and DDA are approved. The BRT alignments are to be identified as part of the subsequent subdivision applications after the Modified OEA is approved (see pages 5-11 and 5-17).

While the EIR will provide additional information regarding specific locations where traffic congestion will occur, it will not result in a comprehensive strategy for addressing many of these important implementation issues. In fact, the EIR would produce better traffic information if a more detailed transportation plan were developed now and studied in the EIR. Staff believes that a more complete transportation plan for Alameda Point must be prepared and then thoroughly analyzed before a DDA or the Modified OEA is approved.

Sustainability and Climate Change

As a low-lying, relatively flat island city surrounded by water, Alameda must be keenly aware and concerned about the potential effects of climate change on sea level rise, flooding, and storm activity within the City. The 1996 Community Reuse Plan, 2003 General Plan Amendment, and 2006 PDC call for a comprehensive sustainability strategy for Alameda Point.

Given the importance of climate change and sustainable development to Alameda, Alameda staff is concerned that the Modified OEA lacks a clear vision of sustainability for Alameda Point, as well as specific objectives, goals, standards, or requirements for achieving sustainable practices and principles, minimizing greenhouse gas emissions, and addressing climate change.

The Master Plan in the Modified OEA includes a three-page section, entitled "Environmental Sustainability Building Strategies" (see page 7-31). This section includes examples of some sustainability practices that may be implemented, and a number of sustainability measures that will be encouraged, but does not provide a forward-thinking vision for the project or set any quantifiable goals or make many firm commitments for the project.

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SunCal's December 2008 Master Plan prepared by urban design and planning consultant, Peter Calthorpe Associates, included a full chapter on sustainability and established a goal of carbon neutrality for the project. At the time, staff commended SunCal on the goal, but raised concerns about the lack of specific requirements and programs to achieve the goal. The Modified OEA eliminated this chapter and the goal of carbon neutrality altogether.

In response to staff concerns, SunCal has argued that determining specific requirements regarding sustainability should be postponed until a future date when more information is available and new and better technologies are developed. Staff disagrees with this point of view. A clear vision, goals, strategies, programs, and requirements for the project should be established at the earliest possible date to guide the redevelopment process. Staff believe Alameda Point should be a model of sustainable development and that the project should implement significant measures to minimize greenhouse gases and climate change. Ongoing flexibility to respond to changes in evolving technologies can be incorporated into a plan for sustainability.

These deficiencies in the Modified OEA reflect important differences in objectives between the City and SunCal. SunCal is maximizing flexibility and minimizing commitments that could result in future costs and limitations on vertical developers, which could ultimately affect the sales price of land. While staff supports some flexibility to account for changing market and technical conditions over the life of a long-term project, a balance needs to be struck with providing meaningful commitments to the community. The redevelopment of Alameda Point is crucial to the future of the City given its size, scope, and location. Alameda cannot afford to ignore or postpone these important decisions about sustainability.

Economic Development

The 1996 Community Reuse Plan, 2003 General Plan Amendment and 2006 PDC have repeatedly reinforced the need for a mixed-use plan for Alameda Point that replaces the jobs that were lost when the Navy closed the base. The 2006 PDC specifically calls for an economic development strategy for Alameda Point. The strategy should: (1) consider Alameda Point's opportunities and constraints for attracting commercial development; (2) evaluate the strengths and weaknesses of Alameda's and the region's other existing and proposed commercial and business park areas; and (3) identify how best to position Alameda Point competitively for future commercial and business park development in order to maximize job generation and to ensure a truly mixed-use community.

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The Modified OEA has no such plan or strategy; it provides a development envelope for commercial buildings, a list of permitted and conditionally permitted non-residential uses, and a land use plan that locates commercial uses in the same locations as the PDC. For the redevelopment of a mixed-use community at Alameda Point to be successful, the Modified OEA must include a thoughtful economic development strategy and commercial business plan. Preparation of such a strategy is a challenge given the current economic climate, but a vision and strategy are essential to creating a vibrant and successful mixed-use development. The economic strategy should not be an afterthought or a simple zoning designation; it needs to be an integral part of the overall plan.

NAS Historic District

The NAS Historic District (District) is both a resource and a constraint at Alameda Point. The 2006 PDC envisioned that a number of the buildings that contribute to the District would need to be demolished and that a substantial amount of new development would need to be accommodated within the boundaries of the District. The Modified OEA makes the same underlying assumption.

However, the PDC recognized that a number of studies would need to be completed before any final decisions on which buildings to remove could be finalized. The PDC called for a rehabilitation and reuse evaluation for each building that was proposed for demolition. In addition, the PDC calls for design guidelines for new construction within the District, which would update guidelines approved in 1996. Finally, the PDC and subsequent staff memorandums have called for a "Day One" strategy for the maintenance and security of vacant historic structures. The purpose of these studies is three-fold:

1. Ensure that serious consideration and study is given to the financial feasibility of reuse for each building proposed for demolition;
2. Build community consensus around the decision to remove an historic resource by clearly showing that rehabilitation and reuse is not feasible for that structure; and
3. Provide certainty that future development within the District will support and not undermine the integrity of the District.

To date, none of these plans or studies have been completed or provided for public review. Without making progress on these important, albeit expensive, first steps,

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community consensus on a redevelopment plan that includes the removal of historic resources will be difficult to achieve.

Affordable Housing Plan

Alameda is committed to the creation and preservation of affordable housing for low- and moderate-income households. Alameda has consistently identified the redevelopment of Alameda Point as its most important remaining opportunity to make a significant contribution to the supply and diversity of affordable housing in the community. The provision of quality affordable housing is an essential ingredient to a successful, mixed-use, mixed-income, and transit-oriented development.

After three years of work, the Modified OEA includes an affordable housing plan for Alameda Point that consists of three paragraphs (see page 3-8). Even the 2006 PDC had a more detailed discussion and commitment to the construction and provision of affordable housing at Alameda Point than the Modified OEA. At minimum, staff would recommend that the Modified OEA include:

1. A discussion of how and how much affordable housing will be integrated into each phase of development.
2. A description of how affordable housing will be geographically distributed throughout the project.
3. An approach to providing both rental and ownership opportunities.
4. A break down of very low, low and moderate income units that will be provided in each phase and the approximate location of those units.
5. A preliminary determination of how many and which units will be spread throughout a phase, and how many and which units will be constructed in stand-alone exclusively affordable projects.
6. A discussion of the funding sources and potential partnerships that might be used to develop the units.
7. A discussion of how the project will support and enhance the existing Alameda Point Collaborative housing and services. This discussion should also begin to address how the Collaborative's existing operations will be maintained and

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preserved during the extensive construction activities that will be occurring over the 20-year build out of Alameda Point.

8. Any plans to relocate or reconfigure the Collaborative should also be revealed, including why the Modified OEA proposes relocating only 186 units when there are currently 200 existing units.

Endangered Species and the Least Tern Colony

One of the last habitats for the endangered, California Least Tern, is located on the former runways of Alameda Point. All previous plans and policies for Alameda Point have endorsed the protection of the least tern habitat at Alameda Point consistent with the recommendations of the United States Fish and Wildlife Service (USFWS), as determined by their 1999 Biological Opinion (BO). According to the USFWS BO, a portion along the western edge of the master-developer footprint (Buffer Zone) should not include buildings and residential uses that will result in potential noise, lighting, and predator impacts to the endangered birds and their fledglings. The Modified OEA proposes to build homes in this Buffer Zone, which is inconsistent with the BO. Staff does not recommend a plan for Alameda Point that proposes residential uses in the Buffer Zone.

III. Next Steps

The term of the ENA expires on July 20, 2010. As the end of the term approaches, it is important to understand what process over the next two months the ENA permits.

1. **Mandatory Milestones.** There are two remaining mandatory performance milestones that must be achieved by SunCal before the July 20, 2010 date, according to the ENA: Finalized Navy Term Sheet and DDA. SunCal can achieve the mandatory milestone for the DDA if both SunCal and Alameda agree on the form and substance of the DDA or if SunCal submits its best and final offer of a DDA acceptable to SunCal.
2. **Potential Automatic Extension.** The term of the ENA automatically extends if and only if (a) SunCal has met all of the mandatory milestones; (b) SunCal has provided a project description sufficient to permit the City to review the project under the California Environmental Quality Act; and (c) SunCal has filed a complete entitlement application with the City. If (a), (b), and (c) have been achieved, the term of the ENA is automatically extended until Alameda has made

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its final determination with respect to the approvals requested by SunCal in the entitlement application.

3. **Final Determination.** Alameda can make its final determination on the project approvals requested by SunCal, as described above, by: (1) denying the project (this action does not require a completed EIR); or (2) approving the project along with a completed EIR. The EIR is not expected to be complete for another 12 to 24 months. As a result, if SunCal has met the conditions described above (paragraph 2. a, b and c) for the Modified OEA as of July 20, 2010, the only action Alameda can take on the project this summer would be to deny SunCal's Modified OEA. If Alameda does not deny the project, the ENA will automatically extend until Alameda does make a final determination on the requested project approvals (i.e., the Modified OEA). Prior to bringing this matter before Alameda, the Planning Board would also have to make a recommendation whether to deny the Modified OEA, or proceed with the project pending CEQA.

Given the resounding defeat in February 2010 of Measure B, which is substantially similar to the Modified OEA, the opposition to the Modified OEA expressed at the May 10, 2010 Planning Board meeting by the community, and the limited progress made by SunCal on the entitlement application over the last three years, as described in this staff report, staff will recommend that Alameda make a discretionary decision by July 20, 2010 as to whether to 1) deny the Modified OEA or 2) to extend the term of the ENA to permit continued negotiations and complete the EIR. In the event that SunCal were to complete its Modified OEA and satisfy the remaining two mandatory milestones by July 20, 2010, the ENA would automatically extend until such time as the City acted on the project: either by denying the Modified OEA (which action does not require an EIR) or approval of the pending EIR and the Modified OEA. At this time, staff does not propose a recommendation on what action Alameda should take by July. In the meantime, staff is soliciting feedback from the community and Alameda's boards and commissions on the Modified OEA in order to help inform Alameda's decision by July.

FINANCIAL IMPACT

The proposed request does not modify the financial provisions contained in the ENA regarding reimbursement of staff and Alameda third-party consultant costs. Therefore, there is no fiscal impact to the City's General Fund, Community Improvement Commission, or Alameda Reuse and Redevelopment Authority budgets.

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May 18, 2010
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RECOMMENDATION

Review and accept presentation on SunCal Modified Optional Entitlement Application.

Respectfully submitted,



Jennifer Ott
Deputy City Manager



Andrew Thomas
Planning Service Manager

Exhibits:

1. April 13, 2010 Letter From SunCal regarding Project Description
2. Base Project Plan and Density Bonus Plan Diagrams (Figure 1)
3. April 20th Letter From City to SunCal regarding SunCal Submittal
4. Draft Planning Board Minutes from May 10, 2010 Public Hearing
5. SunCal Draft Alameda Point Master Plan

CITY OF ALAMEDA

Memorandum

To: Honorable Mayor and
Members of the City Council

Honorable Chair and
Members of the Alameda Reuse and Redevelopment Authority

Honorable Chair and
Members of the Community Improvement Commission

From: Ann Marie Gallant
Interim City Manager/Interim Executive Director

Date: June 1, 2010

Re: (1) Direct Planning Board to Provide Advisory Recommendation on SunCal Modified Optional Entitlement Application at June 21, 2010 Meeting, and (2) Set Public Hearing for Decision on SunCal Modified Optional Entitlement Application and/or extension of the Exclusive Negotiation Agreement from Governing Bodies of Alameda by July 20, 2010

BACKGROUND

On July 18, 2007, the governing bodies of the Alameda Reuse and Redevelopment Authority (ARRA), Community Improvement Commission (CIC), and City of Alameda (together "Alameda") approved an Exclusive Negotiation Agreement (ENA) with SCC Alameda Point LLC (SunCal), as the Master Developer for the redevelopment of Alameda Point. The ENA was amended in March 2008 and in October 2008.

The Second Amendment to the ENA created a process that allowed SunCal to pursue a ballot initiative for a non-Measure A-compliant land use entitlement at Alameda Point and provided that if the initiative failed SunCal would be permitted to submit an Optional Entitlement Application (OEA). This OEA would require a project consistent with the City Charter (Measure A compliant) that could be processed within the overall timeframe of the ENA. The amendment did *not* provide SunCal with the ability to pursue a second ballot initiative, *nor* did it contemplate extending the term of the ENA for processing of an OEA.

On March 26, 2009, SunCal submitted the Alameda Point Revitalization Initiative (Initiative) to the City. The Initiative included a Charter Amendment, General Plan Amendment, Zoning Amendment, Specific Plan and Development Agreement (DA), the details of which were not negotiated with Alameda. On November 3, 2009, when the

CC/ARRA/CIC
Exhibit 3 to
Agenda Item #3-A
07-20-10

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Initiative was determined to have qualified for the ballot, the City Council set the election for February 2, 2010.

Prior to the February election, SunCal submitted an OEA on January 14, 2010 as permitted by the ENA. The OEA submitted by SunCal consisted of substantially the same plan and processes contained in the Initiative. On February 2, 2010, the Initiative failed at the polls with 85 percent of those participating in the election voting against the Initiative. On February 4, 2010, Alameda provided SunCal with a Notice of Default (NOD) stating that the OEA submitted by SunCal did not meet the requirements of the ENA because the OEA conflicts with the City Charter. The only way for the OEA to avoid conflicting with the City Charter was for SunCal to either submit a Density Bonus Application (DBA) for the project in compliance with the City's Density Bonus Ordinance, which SunCal did not do, or to seek an amendment to the City Charter through a second ballot initiative. However, the ENA affords SunCal no further opportunities to amend the City Charter.

Consistent with the terms of the ENA, SunCal had 30 business days, or not later than March 22, 2010, to cure the default. On March 22, 2010, SunCal submitted a Modified OEA in response to Alameda's NOD, which included a Measure A-compliant project (Base Project) that might be modified at a later date through a density bonus.

At a meeting with Alameda staff, SunCal stated that they were not going to submit a DBA at this time consistent with the City's Density Bonus Ordinance because the ordinance requires specific information, such as elevations, which cannot be provided at this stage of the planning process. However, SunCal indicated verbally that they were committed to developing a higher-density project that will permit the land uses, units, and density similar to the Specific Plan contained in the Initiative (Density Bonus Option), not the Base Project, and that they would like for the Environmental Impact Report (EIR) and Disposition and Development Agreement (DDA) to include the Density Bonus Option. The Density Bonus Option is essentially the same land use program as the Initiative with the exception of an increased amount of commercial development and acre of additional park and sustainable uses, such as a solar farm, in the Northwest Territories. SunCal also committed to preparing a master-planned DBA at a future date to avoid a piecemeal approach to implementation of a higher density project under density bonus law.

SunCal has provided minimal information on the proposed Density Bonus Option. SunCal's submittals on the Density Bonus Option include: (1) an April 13, 2010 project description letter, (2) a project proforma provided on April 26, 2010 (Project Proforma), and (3) a subsequent project description letter dated May 18, 2010 (See Exhibits 1, 2

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and 3). Alameda sent a letter to SunCal on May 19, 2010 stating that the Modified OEA was incomplete and requested that SunCal submit additional documentation on the Density Bonus Option with sufficient detail so that it can be reviewed and analyzed by staff and the EIR consultants, as well as the community, Planning Board, and Alameda at the same time as the Base Project (See Exhibit 4).

While the Modified OEA technically cured SunCal's default, staff continues to have numerous concerns with the SunCal plan, including both the Base Project and the Density Bonus Option. On April 20, 2010, the City of Alameda provided SunCal with a letter identifying some of staff's major concerns with SunCal's current submittal (See Exhibit 5). These concerns were also shared with the Planning Board on May 10, 2010 (continued for further discussion to the May 24, 2010 Planning Board meeting), with Alameda on May 18, 2010, and with the Economic Development Commission on May 20, 2010. Approved minutes from the May 10, 2010 Planning Board meeting are attached (See Exhibit 6) and the draft minutes from the May 18, 2010 City Council meeting are included in this evening's agenda packet. Minutes from the other meetings are not yet available. Numerous members of the community attended these meetings expressing both opposition and support for continuing a relationship with SunCal and processing the Modified OEA.

This staff report responds to a number of questions raised by Alameda at the May 18, 2010 meeting and provides a recommendation about next steps for the SunCal Modified OEA.

DISCUSSION

Responses to May 18, 2010 Meeting Questions

At Alameda's May 18, 2010 meeting, numerous questions and issues were raised by the governing bodies. The questions and their responses are grouped among the following categories:

1. Project Economics

Questions: Can the project financially support the proposed transportation improvements and program, public benefits, including Citywide benefits, and a \$108 million land payment to the Navy? Are the assumptions supporting the Project Proforma conservative? What progress has been made on resolving the financial provisions that were included in the Initiative by SunCal (e.g., \$200 million cap on public benefits, requirement to use 100% of redevelopment tax increment)?

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Alameda staff contracted with a real estate economics consulting firm, Economic & Planning Systems (EPS), to evaluate SunCal's Project Proforma for the Density Bonus Option. In particular, staff asked EPS to review the residential market assumptions that serve as the basis for the amount and timing of revenue projections in the Project Proforma. The results of their evaluation are summarized in the report, *Alameda Point Pro Forma Market Review* (See Exhibit 7 on file in the City Clerk's Office). In general, EPS and the City have concerns about numerous SunCal assumptions, many of which appear to be overly optimistic. Overly optimistic assumptions can significantly distort the economics of the analysis and expose the City and the Developer to significant risks. These potential risks include:

- (1) SunCal cannot provide the financing commitments necessary to implement the project and, as a result, "banks" the Alameda Point land without making progress on developing the property;
- (2) SunCal commences construction, the project does not perform to the levels projected in the Project Proforma, and, therefore, future phases of development are not completed; and
- (3) SunCal develops the project, but because the performance of the project was significantly below projections in the Project Proforma, public benefits and transportation improvements were not built to the levels committed to in the approved plan.

Table 1, recreated from the EPS report, provides a comparison between key SunCal assumptions and EPS' recommended assumptions:

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Table 1
Key Assumption Comparison

Assumption	SunCal	EPS Recommendation	% Difference
Single Family Home Value (per unit in 2014)	\$1,042,000	\$860,000	21%
Average Home Value Premiums	6.4%	1%	530%
Average Single Family/Townhome Absorption (per year)	233 units	175 units	33%
Average Multi-Family Absorption (per year)	220 units	175 units	26%
Single Family Direct Construction Costs (per square foot in 2014)	\$115	\$130	-12%
Real Appreciation Home Value Construction Cost	2%	1.4%	43%
	0%	0.4%	-100%
Land Leverage	Full	Partial	
Residential Land Values (per acre in 2014)	\$2.5 - \$7.7 Million	\$2.0 - \$5.3 Million	25% to 45%

If the SunCal market assumptions were substituted with EPS' recommended assumptions, the feasibility of the Project Proforma would be substantially affected in an adverse manner, especially given SunCal's Internal Rate of Return requirements of 20 percent to 25 percent, as stated in the ENA. Additionally, staff has reviewed the cost estimates included in SunCal's Project Proforma and has raised concerns with a number of key transportation and infrastructure cost assumptions. SunCal and staff are

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in the process of discussing these concerns. Due to the results of these evaluations, staff and consultants have serious concerns with the ability of the project to support financially the significant infrastructure, transportation, public benefit, fiscal neutrality and land acquisition costs currently included in the SunCal Project Proforma.

While in the most recent draft of its proposed DA, SunCal has removed the financial provisions from the DA that were included in the Initiative related to the \$200 million cap on public benefits and tax increment financing contingency, this does not change staff's concern about SunCal's ability to deliver the transportation improvements, public benefits and fiscal neutrality envisioned in the Modified OEA.

2. Financing Capacity and Risk of Foreclosure and Bankruptcy

Questions: Does SunCal have the financial wherewithal to develop the Modified OEA? How does the City avoid becoming SunCal's next "Albuquerque," a SunCal and D.E. Shaw project outside of Albuquerque, New Mexico that recently filed for bankruptcy to avoid foreclosure by its lenders?

The specific risks described above demonstrate the importance of securing a project that is projected to be financially feasible. While no one can predict with certainty whether a project's performance will be better or worse than projected, higher risk projects necessitate a higher level of scrutiny and likewise necessitate a financially secure developer or developer partner.

Section 3.6 of the ENA recognizes the importance of having a financially secure developer or developer partner. This section sets forth elements of the DDA to be negotiated between Alameda and SunCal, including requiring in Section 3.6.4 the use of certain "regulatory and financial mechanisms to achieve completion of the project" including "[a]ppropriate financial assurances, which may include performance and payment guarantees, to assure development of conveyed phases."

Typically, where a project is to be developed by a single-asset entity, that entity's owners or financial partners would be expected to provide financial assurances and guarantees to ensure completion of the project. The need for such assurances is particularly evident in the case of a large, complex project involving redevelopment and reuse of a former military base, as is the case of Alameda Point. Examples of such

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assurances in the context of military base reuse and redevelopment include the following¹:

- **Tustin.** In the redevelopment of the Marine Corps Air Station-Tustin in Tustin, the single-asset entity developer (Tustin Legacy Community Partners, LLC) was a joint venture between two development companies, Centex Homes and Shea Homes. The DDA negotiated between the parties provided for unconditional guarantees of the developer's obligations from the parent entities (Centex Homes, Shea Properties, and Shea Homes) as well as from "any other constituent entity of the Developer requested by the City."
- **Novato.** In the redevelopment of the Hamilton Army Airfield in Novato, the single-asset entity developer (Novato Community Partners, LLC) was a joint venture between two development companies, Centex Homes and Shea Homes. Each of the developers, Centex Homes and Shea Homes executed the DA negotiated with the City as "developer," meaning that Centex Homes and Shea Homes, the parent entities, secured the obligations of the developer.
- **Hunters Point Phase I.** In Phase I of the redevelopment of the Hunters Point Shipyard in San Francisco, the single-asset entity developer Lennar/BVHP LLC is a joint venture between two development companies, Lennar and LNR. The Phase I DDA negotiated between the parties provided for a guaranty of all of the developer's obligations under the DDA, executed by Lennar and LNR, the developer's parents.
- **Hunters Point Phase II.** In Phase II of the redevelopment of the Hunters Point Shipyard, guarantees of the single-asset entity developer's obligations are anticipated to be required both on approval of the DDA at the outset of the project, and as approvals are sought to transfer property to the developer during the course of development. The initial project guaranty is to cover specific initial costs, and additional guarantees are required to assume completion of project infrastructure and community benefits. The guarantor must have a net worth of at least \$50 million.
- **Treasure Island.** In the redevelopment of Naval Station Treasure Island in San Francisco Bay, the single-asset entity developer Treasure Island Community Development, LLC is a joint venture between Lennar Corporation and KSWM

¹ Staff has publicly available copies of these agreements on file should the Council wish to review any or all of them.

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Treasure Island LLC. The development plan and term sheet negotiated set out the content of a DDA, and provided that the DDA would require the developer to provide “adequate means to assure the Authority and the City that [developer] has sufficient financial wherewithal and commitment to fulfill the financial, indemnification and other performance obligations of [developer]”

The project developer entity for Alameda Point, SCC Alameda Point LLC, is owned by another entity, Cal Land Venture, LLC, which is owned by a SunCal affiliate and an affiliate of investment firm D.E. Shaw & Co., L.L.C. Given SunCal's recent financial challenges, as evidenced by approximately thirty bankruptcy filings for individual SunCal entities, including a bankruptcy filing related to the redevelopment of the Oak Knoll Naval Hospital in Oakland and another recent bankruptcy filing related to a 36,000-unit master planned community in Albuquerque, New Mexico, the City will want to seek assurances that D.E. Shaw will provide adequate equity funding and guarantees for the project. Indeed, SunCal requested that Alameda permit a transfer of ownership to D.E. Shaw in 2008, because of SunCal's need for equity financing to facilitate the continued funding of the ENA entitlement process for Alameda Point. Alameda accommodated that request in the Second Amendment to the ENA, executed October 7, 2008. To date, SunCal has provided no assurance demonstrating that D.E. Shaw would continue to fund the project.

In evaluating SunCal as developer for Alameda Point, considerations of SunCal's financing capacity and risk of foreclosure and bankruptcy are real and significant, and should be scrutinized in the context of the project risks described above.

3. Economic Development Strategy

Questions: What type of commercial activity will be attracted to Alameda Point? How many and what kind of jobs will be generated by the project? Does the commercial business plan promote intra-City commuting by households that are both local residents and employees?

These questions remain unanswered at this time. The Modified OEA does not have a commercial business plan or economic development strategy; it provides a development envelope for commercial buildings, a list of permitted and conditionally permitted non-residential uses, and a land use plan that locates commercial uses in the same locations as previous plans. For the redevelopment of a mixed-use community at Alameda Point to be successful, staff agrees that the Modified OEA must include a thoughtful economic development strategy and commercial business plan. Preparation of such a strategy is a challenge given the current economic climate, but a vision and

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economic development strategy should not be an afterthought or a simple zoning designation; it needs to be an integral part of the overall plan. Staff has requested, and SunCal has agreed to prepare, an economic development strategy and commercial business plan for Alameda Point.

4. Housing Needs

Questions: How much housing has been included in past plans and how does the current SunCal plan compare to past plans? How much housing is necessary to meet the City's regional housing needs?

Previous Plans

In 1997 at the time of closure, the portion of the Naval Air Station that is known as "Alameda Point" (i.e. those areas west of Main Street) included approximately 343 housing units and 1,900 dormitory rooms, the Bachelor Officer Quarters (BOQ) and Bachelor Enlisted Quarters (BEQ), as well as approximately 15,000 jobs. In the late 1980 and early 1990s, NAS Alameda had provided up to 18,000 jobs.

The 1996 NAS Community Reuse Plan proposed redevelopment included approximately 1,650 units at Alameda Point (2,737 units including Alameda Landing, Bayport, and Coast Guard Housing).

The 2003 Alameda Point General Plan Amendment proposed 1,928 units.

The 2006 Preliminary Development Concept proposed 1,935 units.

The September 2008 SunCal Plan proposed 4,210 housing units.

The March 2010 SunCal Plan "Base Plan" proposes 3,712 units.

The March 2010 SunCal Plan "Density Bonus Option" proposes 4,845 units.

Regional Housing Need

In 2008, the State Department of Housing and Community Development (HCD) and Association of Bay Area Governments (ABAG) established the most recent regional housing needs determinations for each city and county in the region for the period 2007 through 2014. The regional housing needs determination for Alameda for this period includes a total of 2,046 units. Of the 2,046 units, 482 of the units (24 percent) are

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needed for very-low income households, 329 units (16 percent) are needed for low-income households, and 392 units (19 percent) are needed for moderate income households. The balance of the units (843 units or 41 percent) may be market rate housing.

Given that new construction at Alameda Point would not commence until 2012, it is unlikely that the redevelopment of Alameda Point will play an important role in providing housing during the current housing planning period of 2007-2014. However, for discussion purposes, the City has identified 26 sites throughout the City that can accommodate new housing. Alameda Point is one of those sites. As shown in Table 5-1 in the draft Housing Element, if Alameda Point provides 1,800 new units, the 26 sites citywide could accommodate up to 3,707 housing units, which exceeds the city's allocation of 2,046 by 1,661 units. Although the total number of units would exceed the total number needed, the challenge for Alameda as with all cities will be the requirement to provide for very-low income and low-income households (40 percent of all new housing built). The Base Project and Density Bonus Option would both result in the City exceeding its overall housing allocation in all income categories with the exception of units affordable to very-low income households.

Recommended Next Steps

As discussed at Alameda's May 18, 2010 meeting, the term of the ENA expires on July 20, 2010. In the event that SunCal were to complete its Modified OEA and satisfy the remaining two mandatory milestones in the ENA by July 20, 2010, the ENA would automatically extend until such time as the City acted on the project: either by denying the Modified OEA (which is exempt from CEQA and does not require an EIR) or certifying the pending EIR and approving the Modified OEA.

The status of SunCal's remaining ENA requirements is provided below:

1. **Complete Application.** As discussed above, SunCal has not yet completed its Modified OEA. Alameda sent a letter on May 19, 2010 describing why the Modified OEA is incomplete (See Exhibit 4). At a meeting with staff on May 25, 2010, SunCal stated that they will be responding to Alameda's letter of incompleteness within the week.
2. **Finalized Navy Term Sheet.** The Finalized Navy Term Sheet (Term Sheet) is one of two remaining mandatory milestones that must be achieved by SunCal before the July 20, 2010 date, according to the ENA. The Term Sheet will primarily contain terms and conditions related to the amount and timing of

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payment(s) to be made to the Navy by Alameda (through its master developer, SunCal) in exchange for the transfer of land from the Navy. The Navy, Alameda, and SunCal must agree to all of its terms.

The Term Sheet will be based on a project proforma negotiated between the Navy and Alameda, in conjunction with SunCal. Alameda has not engaged the Navy in Term Sheet negotiations related to the Modified OEA because Alameda and SunCal have not agreed on the Project Proforma, which was provided to Alameda on April 26, 2010. As described above, Alameda has serious concerns with key assumptions in the Project Proforma and cannot negotiate the project's ability to support a significant land payment to the Navy until these issues are resolved.

3. **Disposition and Development Agreement.** The DDA is the other remaining mandatory performance milestone that must be achieved by SunCal before the July 20, 2010, pursuant to the ENA. SunCal can achieve the mandatory milestone for the DDA if both SunCal and Alameda agree on the form and substance of the DDA or if SunCal submits its best and final offer of a DDA acceptable to SunCal.

Given the defeat in February 2010 of Measure B, which is substantially similar to the Modified OEA; the opposition to the Modified OEA expressed at public meetings by some community members; the financial uncertainties and risks of the Modified OEA as described above; and the limited progress made by SunCal on the entitlement application over the last three years, as described in previous staff reports, staff is recommending that Alameda make a discretionary decision by July 20, 2010 as to whether to 1) deny the Modified OEA or 2) to extend the term of the ENA to permit continued negotiations and completion of the EIR. Staff is also recommending that Alameda direct the Planning Board to provide an advisory recommendation to Alameda at its June 21, 2010 meeting on the Modified OEA to help inform Alameda's decision in July. At this time, staff does not propose a recommendation on what action Alameda should take in July.

FINANCIAL IMPACT

The proposed request does not modify the financial provisions contained in the ENA regarding reimbursement of staff and Alameda third-party consultant costs. Therefore, there is no fiscal impact to the City's General Fund, Community Improvement Commission, or Alameda Reuse and Redevelopment Authority budgets.

Honorable Chair and
Members of the Alameda Reuse and Redevelopment Authority

June 1, 2010
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RECOMMENDATION

- 1) Direct Planning Board to provide advisory recommendation on SunCal Modified Optional Entitlement Application at June 21, 2010 meeting, and
- 2) Set Public Hearing for decision on SunCal Modified Optional Entitlement Application and/or extension of the ENA from governing bodies of Alameda by July 20, 2010.

Respectfully submitted,



Jennifer Ott
Deputy City Manager

Exhibits:

1. April 13, 2010 Letter From SunCal to Alameda regarding Project Description
2. April 26, 2010 SunCal Density Bonus Option Project Proforma
3. May 18, 2010 Letter from SunCal to Alameda regarding Density Bonus Option
4. May 19, 2010 Letter from Alameda to SunCal regarding Incompleteness of SunCal Modified OEA
5. April 20, 2010 Letter from Alameda to SunCal regarding Concerns with Modified OEA
6. May 10, 2010 Planning Board Meeting Minutes
7. May 24, 2010 Final Report, *Alameda Point Pro Forma Market Review*, prepared by EPS

CITY OF ALAMEDA

Memorandum

To: Honorable Mayor and
Members of the City Council

Honorable Chair and
Members of the Alameda Reuse and Redevelopment Authority

Honorable Chair and
Members of the Community Improvement Commission

From: Ann Marie Gallant
Interim City Manager/Interim Executive Director

Date: July 7, 2010

Re: Presentation on SunCal Modified Entitlement Application

BACKGROUND

On July 18, 2007, the governing bodies of the Alameda Reuse and Redevelopment Authority (ARRA), Community Improvement Commission (CIC), and City of Alameda (together "Alameda") approved an Exclusive Negotiation Agreement (ENA) with SCC Alameda Point LLC (SunCal), as the Master Developer for the redevelopment of Alameda Point. The ENA was amended in March 2008 and in October 2008.

The Second Amendment to the ENA created a process that allowed SunCal to pursue a ballot initiative for a non-Measure A-compliant land use entitlement at Alameda Point and provided that if the initiative failed SunCal would be permitted to submit an Optional Entitlement Application (OEA). This OEA would require a project consistent with the City Charter (Measure A compliant) that could be processed within the overall timeframe of the ENA. The amendment did not provide SunCal with the ability to pursue a second ballot initiative, nor did it contemplate extending the term of the ENA for processing of an OEA.

On March 26, 2009, SunCal submitted the Alameda Point Revitalization Initiative (Initiative) to the City. The Initiative included a Charter Amendment, General Plan Amendment, Zoning Amendment, Specific Plan and Development Agreement (DA), the details of which were not negotiated with Alameda. On November 3, 2009, when the Initiative was determined to have qualified for the ballot, the City Council set the election for February 2, 2010.

Prior to the February election, SunCal submitted an OEA on January 14, 2010 as permitted by the ENA. The OEA submitted by SunCal consisted of substantially the same plan and processes contained in the Initiative. On February 2, 2010, the Initiative failed at the polls with 85 percent of those participating in the election voting against the

CC/ARRA/CIC
Exhibit 4 to
Agenda Item #3-A
07-20-10

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Initiative. On February 4, 2010, Alameda provided SunCal with a Notice of Default (NOD) stating that the OEA submitted by SunCal did not meet the requirements of the ENA because the OEA conflicts with the City Charter. The only way for the OEA to avoid conflicting with the City Charter was for SunCal to either submit a Density Bonus Application (DBA) for the project in compliance with the City's Density Bonus Ordinance, which SunCal did not do, or to seek an amendment to the City Charter through a second ballot initiative. However, the ENA affords SunCal no further opportunities to amend the City Charter through a second initiative.

Consistent with the terms of the ENA, SunCal had 30 business days, or not later than March 22, 2010, to cure the default. On March 22, 2010, SunCal submitted a Modified OEA in response to Alameda's NOD, which included a Measure A-compliant project (Base Project) that might be modified at a later date through a density bonus.

At a meeting with Alameda staff, SunCal stated that no DBA would be submitted at this time consistent with the City's Density Bonus Ordinance, because the ordinance itself requires specific information, such as architectural elevations, which SunCal stated could not be provided at this stage in the planning process. However, SunCal indicated verbally its commitment to developing a higher-density project that will permit the land uses, units, and density similar to the Specific Plan contained in the Initiative (Density Bonus Option), not the Base Project. SunCal also indicated that the Environmental Impact Report (EIR) and Disposition and Development Agreement (DDA) would include the Density Bonus Option. The Density Bonus Option is essentially the same land use program as the Initiative, with the exception of an increased amount of commercial development, one acre of additional park and the inclusion of sustainable uses, such as a solar farm, in the Northwest Territories. SunCal also committed to preparing a master-planned DBA at a future date to avoid a piecemeal approach to implementation of a higher density project under density bonus law.

On April 20, 2010, the City of Alameda provided SunCal with a letter identifying some of staff's major concerns with SunCal's current submittal. In response to the April 20, 2010 letter and staff's requests at weekly meetings, SunCal has provided various documents on the proposed Density Bonus Option to Alameda over the last several months, including a project proforma provided on April 26, 2010 (Project Proforma) (Exhibit 1). Alameda also sent a letter to SunCal on May 19, 2010 stating that the Modified OEA was incomplete and requested that SunCal submit additional information on the Density Bonus Option with sufficient detail so that it can be reviewed and analyzed by staff and the EIR consultants, as well as the community, Planning Board, and Alameda at the same time as the Base Project.

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On May 27, 2010, SunCal emailed a letter to the City's Planning and Building Department responding to the City's Notice of Incompleteness letter, including supplemental information to be processed as part of the Modified OEA and, on May 28, 2010, a letter to the Interim City Manager responding to Alameda's April 20, 2010 letter. Staff reviewed SunCal's response and has met with SunCal on a weekly basis to address any remaining concerns regarding the completeness of the Modified OEA. Per the results of these discussions, and at staff's request, SunCal submitted, on June 24, 2010, a consolidation of all previous submittal related to the Density Bonus Option as well as additionally requested documentation concerning the Density Bonus Option. Based on a review of the initial Modified OEA provided on March 22, 2010, and all subsequent submittals through June 24, 2010, staff has determined the Modified OEA complete.

Notwithstanding this "completeness" determination, staff continues to raise planning, transportation, and economic concerns with respect to the SunCal plan, including both the Base Project and the Density Bonus Option. These concerns were shared with the Planning Board on May 10, 2010 and May 24, 2010; also with the governing bodies of Alameda on May 18, 2010, and with the Economic Development Commission on May 20, 2010. On June 1, 2010, the governing bodies of Alameda set a public hearing date for a decision on the SunCal Modified OEA and/or extension of the ENA by July 20, 2010. The public hearing has been scheduled for July 20, 2010.

The governing bodies of Alameda at the June 1, 2010 also raised questions regarding SunCal's Modified OEA. The answers to these questions and staff's expressed concerns regarding SunCal's Modified OEA are the subject of this staff report.

DISCUSSION

Responses to June 1, 2010 Meeting Questions

At Alameda's June 1, 2010 meeting, various questions and issues were raised by the governing bodies. The questions and their responses are provided below:

1. What is the status of ongoing negotiations between SunCal and Alameda regarding project economics and assumptions in the SunCal Project Proforma?

As discussed at the June 1, 2010 meeting, Alameda staff contracted with the real estate economics consulting firm that has been working on this project for many years, Economic & Planning Systems (EPS), to evaluate SunCal's Project Proforma for the Density Bonus Option. In particular, staff asked EPS to review and analyze the

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revenue, cost and fiscal neutrality assumptions in the SunCal Project Proforma. Overall, EPS and staff believe many of SunCal's assumptions are overly optimistic, which has significant implications on the financial feasibility of the SunCal Project Proforma. The following provides a discussion of EPS and staff findings regarding key financial assumptions.

Revenue Assumptions

EPS prepared a detailed report, *Alameda Point Pro Forma Market Review*, dated May 24, 2010, which summarizes areas of disagreement between EPS and SunCal concerning key market assumptions in the SunCal Project Proforma (EPS Market Report) (Exhibit 2). The EPS Market Report was made publicly available for the June 1, 2010 meeting and is on file in the Clerk's Office. At the time of the June 1, 2010 meeting, the key areas of disagreement regarding revenue assumptions included single-family home sales prices, price premiums, absorption, and home value appreciation.

At the June 1, 2010 meeting, SunCal presented its response (Exhibit 3) to the EPS Market Report, which outlined SunCal's differing conclusions regarding revenue and cost assumptions. At the meeting, the governing boards of Alameda directed staff to continue discussions with SunCal regarding the SunCal Project Proforma and to provide an update on the results of these further conversations at a subsequent meeting. Staff formally discussed the Project Proforma with SunCal on June 15, 2010 and June 24, 2010, and has informally corresponded with SunCal regarding the Project Proforma over the past month. As a result of these discussions, SunCal has agreed to modify the absorption schedule in its Project Proforma to be consistent with EPS' recommendation. However, agreement has not been reached regarding other differing assumptions and thus both EPS and Alameda staff continue to retain concerns on SunCal's other revenue assumptions, many of which appear to be overly optimistic. EPS prepared the attached June 29, 2010 memorandum (EPS Memorandum), which provides a status report on ongoing discussions and summarizes: (1) SunCal's issues with the EPS Market Report, (2) SunCal's supporting data provided to date, and (3) EPS' response to SunCal's issues (Exhibit 4). In sum, the EPS Memorandum concludes that many of SunCal's assumptions do not take into account the significant changes in the real estate market that have taken place as a result of the unprecedented recession of the last several years. Consequently, EPS believes that many of the assumptions are not supported by sound data and analysis. A table comparing the differences between EPS and SunCal revenue assumptions is provided below.

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Cost Assumptions

EPS and staff also continue to have concerns with numerous cost assumptions, included in SunCal's Project Proforma, including cost escalation, direct construction costs for single-family homes, infrastructure construction contingency, and key transportation and infrastructure costs. The EPS Market Report and EPS Memorandum summarize EPS recommendations regarding cost escalation and direct construction cost assumptions.

To date, at staff's request, SunCal has agreed to increase the construction cost for Bus Rapid Transit (BRT) by an additional \$5 million, and to add the Cross-Alameda multi-use pathway as a construction cost of \$2 million. With soft costs and contingencies this increases projected project costs by approximately \$10.3 million. There are other infrastructure related costs that staff believe also should be increased or added to the SunCal Project Proforma, including an increase to the infrastructure construction cost contingency from 20 to 25 percent and \$1.2 million for a fair share amount of a projected new Corporation Yard. The construction costs for the ferry terminal, the project's share for the Broadway/Jackson interchange, and the transportation demand management (TDM) monitoring and refinement costs are still being discussed and evaluated, and will also affect the total costs for improvements. A table comparing the differences between EPS and SunCal cost assumptions is provided below.

Fiscal Neutrality Assumptions

Lastly, EPS prepared the June 2010, *Alameda Point Public Services Analysis*, which analyzes the fiscal impacts of the Modified OEA (Density Bonus Option) on the City's General Fund and certain affected Special Revenue Funds (EPS Fiscal Report) (Exhibit 5) in order to assure that the City's established policy of fiscal neutrality will be achieved.¹ The EPS Fiscal Report finds that while the General Fund is projected to experience shortfalls only in the initial years, the Public Works-related Special Revenue Funds are insufficient to fund costs. Various measures can help to mitigate the fiscal impacts on Alameda, including developer payments and ongoing annual property assessments. There are also ongoing operations costs associated with the transportation program proposed for the project that will need to be supported through assessments from Alameda Point property owners. However, the effectiveness of the fiscal neutrality mitigation measures and the availability of transportation assessments, are affected by the overall feasibility of the project, as discussed in greater detail below.

¹ City of Alameda Resolution No. 13643, November 5, 2003

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2. Can the project financially support the proposed transportation improvements and program, public benefits, fiscal neutrality, and a significant land payment to the Navy?

As a result of these remaining issues and concerns, staff directed EPS to prepare a financial feasibility analysis based on SunCal's Project Proforma, but incorporating EPS and staff's proposed changes in revenue and cost assumptions, to evaluate the potential impacts of such changes on project feasibility. EPS prepared a report, *Alameda Point Financial Feasibility Analysis*, dated June 2010, which summarizes the results of the feasibility analysis (EPS Feasibility Report) (Exhibit 6), which incorporates the findings of the EPS Market Report, the EPS Memorandum, and EPS Fiscal Report. This financial feasibility analysis is a tool for evaluating the effects of changes to the SunCal Project Proforma on project feasibility; it is not intended to represent Alameda's proposed business plan.

Table 1, recreated from the EPS Feasibility Report, provides a summary of key revenue and cost assumptions in the EPS financial feasibility analysis that differ from the SunCal Project Proforma. Table 1 also compares the EPS and SunCal assumptions. EPS also incorporated other modifications into its analysis that differ from the SunCal Project Proforma, which are described in detail in the EPS Feasibility Report, but do not substantially affect the findings of the analysis.

Table 1
Key Assumption Modifications and Comparison

Assumption	SunCal	EPS Recommendation	% Difference
Revenue Assumptions			
Single Family Home Values (per unit in 2014)			
Single-Family Detached	\$1,042,000	\$860,000	-17%
Duplexes	\$868,000	\$790,000	-9%
Average Home Value Premiums			
Single-Family Detached	5%	1%	-80%
Duplexes	2.7%	1%	-63%
Townhomes	4%	1%	-75%

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Average Single Family/Townhome Absorption (per year)	233 units	175 units	-25%
Average Multi-Family Absorption (per year)	220 units	175 units	-20%
Real Appreciation in Home Prices Value	2%	1.4%	-30%
Cost Assumptions			
Single Family Direct Construction Costs (per square foot in 2014)			
Single-Family Detached	\$115	\$130	13%
Duplexes	\$126	\$150	19%
Townhomes	\$137	\$202	47%
Vertical Construction Cost Escalation above Inflation	0%	0.4%	n/a
Horizontal Construction Cost Escalation above Inflation	0%	0.5%	n/a
Horizontal Construction Cost Contingency	20%	25%	25%
Additional Costs (Cross-Alameda bike trail, BRT costs, corporation yard)	\$0	\$11.5 million	n/a

There are other policy and development assumptions contained in SunCal's Project Proforma that could be affected by further analysis and negotiations with Alameda and the Navy, including, but not limited to:

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1. **Public Financing.** SunCal assumes 100 percent of all housing and non-housing redevelopment tax increment financing will be dedicated to this project. (\$212 million)
2. **Property Management.** SunCal assumes that it will provide interim property management services for Alameda Point as the property is developed, with the exception of the United States Maritime Administration (MARAD) lease. The MARAD lease revenues and expenses are assumed to be retained by the City in the EPS feasibility analysis. (\$56 million)
3. **Adaptive Reuse.** SunCal assumes no revenues or costs for the adaptive reuse of individual buildings. The SunCal Project Proforma does include infrastructure costs associated with the adaptive reuse area.
4. **Commercial Assumptions.** SunCal is preparing a commercial market study and business plan that will inform the ultimate revenue and cost assumptions for commercial uses in the Project Proforma.

The EPS financial feasibility analysis determined that the feasibility of the project is substantially affected in an adverse manner by the aforementioned changes, resulting in an internal rate of return (IRR) of approximately negative 12 percent compared to a positive 20 percent in the SunCal Project Proforma. As stated in the ENA, SunCal's IRR requirement for the Alameda Point project is between 20 percent to 25 percent.

EPS also conducted sensitivity analyses to test the implications for project feasibility if the market experiences stronger than expected recovery and/or commands higher than projected prices, premiums and construction costs, as envisioned by SunCal's Project Proforma. The following describes the results of a sensitivity analysis run for each of the following individual assumptions:

1. **Single Family Home Prices.** EPS assumed single-family home prices similar to those in the SunCal Project Proforma – the IRR increased by 10 percentage points (for an IRR of negative 2 percent, rather than a negative 12 percent).
2. **Residential Price Premiums.** EPS assumed additional price premiums for single-family homes comparable to those in the SunCal Project Proforma – the IRR increased by three percentage points (for an IRR of negative 9 percent, rather than a negative 12 percent).

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3. **Construction Costs.** EPS assumed construction costs on vertical construction for single-family homes comparable to those in the SunCal Project Proforma – the IRR increased by eight percent (for an IRR of negative 4 percent, rather than a negative 12 percent).

The cumulative effect of these three sensitivity analyses result in an IRR of 14 percent, a return well below the return required by SunCal in the ENA. However, EPS continues to believe that this improved return using SunCal's assumptions does not take into account significant changes in the real estate market and that EPS's projected IRR of approximately negative 12 percent is much better supported by sound data and analyses. The results of the EPS Feasibility Report raise serious concerns about the financial feasibility of SunCal's Modified OEA, even if some of SunCal's key market assumptions are accepted. Moving forward on a project that is financially underwritten based on overly optimistic assumptions exposes both the City and the Developer to significant risks including:

- (1) SunCal cannot provide the financing commitments necessary to implement the project and, as a result, "banks" the Alameda Point land without making progress on developing the property;
- (2) SunCal commences construction, the project does not perform to the levels projected in the Project Proforma, and, therefore, future phases of development are significantly delayed or perhaps not completed; and
- (3) SunCal develops the private project, but because project financial performance is significantly below projections in the Project Proforma, public benefits and transportation improvements cannot be built to the levels committed in the approved plan, DA and DDA.

In sum, there is considerable risk that the Modified OEA (Density Bonus Option) will not be able to support the proposed transportation improvements and program, public benefits, fiscal neutrality, as well as a significant land payment to the Navy.

3. Does SunCal project comport with definitions of transit-oriented development (TOD)?

At a recent City Council meeting, discussion occurred regarding the applicability of the term "transit-oriented development" (TOD) in relation to the SunCal Density Bonus Option. While no single definition of TOD exists, transportation planners typically define TOD as including a mix of retail, commercial, and residential land uses, a diversity of

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housing types, development within close proximity to a rail or rapid bus station (generally within a one-quarter to one-half mile walking distance), high-quality pedestrian and bicycling facilities to encourage walking and cycling, and reduced amounts of parking for personal vehicles to encourage transit and reduce vehicle miles traveled.

As defined by the Center for Transit-Oriented Development, there are various types of TODs ranging from “Regional Centers”, which exhibit the greatest presence of TOD features, such as downtown San Francisco and Midtown Manhattan to “Special Use/Employment Districts”, which contain fewer TOD features, such as South of Market in San Francisco and the South Waterfront in Portland, Oregon.² The differences between these TODs include the types and frequency of transit services, parking standards, and land use densities. Based on staff’s review, the Density Bonus Option proposal can be considered a “Transit Town Center” consisting of a moderate density of residential, commercial, employment and civic/cultural uses clustered around a multi-modal transit station.

4. What are the traffic findings from previous analyses conducted for Alameda Point that could be used to determine the traffic impacts associated with the proposed Density Bonus Option?

There have been several studies related to the development of Alameda Point that address traffic, beginning with the 1999 EIR for Reuse of Naval Air Station Alameda and the Fleet and Industrial Supply Center, Alameda Annex and Facility. The EIR analyzed now-outdated land use assumptions and cumulative impacts. Additionally, this document analyzed six different mixed land use assumptions, but did not identify or analyze specific TDM measures. Transportation proposals included some modifications to the then-current transit service, a demonstration project for the use of Amphibious Transportation Vehicle (DUKW) and an electric shuttle service to the 12th Street BART Station.

A more detailed TDM program was included in the mixed land use assumptions for the 2002 Master Concept Plan developed by Alameda Point Community Partners, including an enhanced and relocated ferry and an aerial tram to the West Oakland BART Station. However, this study did not include a traffic impact analysis. To assess traffic impacts, the consultant assumed that the proposed TDM program would reduce peak-hour traffic volumes by 32 percent and compared the peak hour volumes from the

² Reconnecting America and the Center for Transit-Oriented Development, *Station Area Planning: How to Make Great Transit-Oriented Places*, 2008

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project and cumulative traffic from other uses with the then projected 2005 and 2020 capacities of the Webster and Posey Tubes (Tubes).

The following year (2003), the City initiated the Alameda Point General Plan Amendment (GPA) EIR, which included a detailed traffic analysis for a mixed land use proposal that included 1,928 housing units and approximately 2.3 million square feet of job-producing commercial. The analysis concluded that a total of 37,634 daily trips would be generated from the development at full buildout. A total of 792 trips were assumed to be by transit. In addition, 2,704 trips and 2,911 trips were estimated for the AM and PM peak hours, respectively. The traffic analysis identified significant impacts to two intersections in Oakland (Jackson Street/6th Street and Brush Street/12th Street) and no significant impacts to intersections in the City of Alameda. The Posey Tube street segment was determined to have significant impacts due to the project, but no significant impacts were identified for any of the Congestion Management Plan network segments in the AM peak hour. During the PM peak hour, High Street from Howard Street to I-880, and Alameda Avenue from Fruitvale Avenue to High Street were identified as having significant impacts due to the project. These street segments are in Oakland.

The 2006 Alameda Point Preliminary Development Concept (PDC) included residential land use assumptions consistent with the GPA EIR, but job-generating commercial land use assumptions were increased by approximately a million square feet to 3.4 million square feet. The proposed TDM program was divided into three stages: Day One Improvements, Mid-Term Improvements and Long-Term Improvements. The goal of the TDM program was to reduce residential trips by 10 percent and commercial trips by 30 percent.

Day-One Improvements included a shuttle or transit service to 12th Street BART at 15- to 20-minute headways and expanded ferry service. The Mid-Term Improvements included Rapid Bus Service, Long-Term Improvements including consideration of Bus Rapid Transit (BRT), Light Rail or Group Rapid Transit along the former Alameda Beltline right-of-way and crossing into Oakland using the railroad bridge at Fruitvale Avenue. No detailed traffic impact evaluations were conducted for street segments and intersections as part of the 2006 PDC effort.

In April 2008, the City hired a consultant to develop the Alameda Point Station Area Plan (SAP) funded by the Metropolitan Transportation Commission and the Alameda County Transportation Improvement Authority to evaluate benefits of clustering development with close proximity to transit. The plan looked at the following three alternatives with different transportation strategies:

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1. The 2006 PDC that would provide transit service to Oakland BART at 12th Street at 15-minute headways, ferry service to San Francisco at 30-minute headways, shuttle connections to San Francisco express buses and downtown Oakland, a transit station at the Sea Plane Lagoon, and a Car Share program.
2. A Transit Enhanced PDC with 1,800 market rate housing units, and 9,000 jobs that would provide transit service to Oakland BART at 12th Street at 12-minute headways, ferry service to San Francisco at 30-minute headways, shuttle connections to San Francisco express buses and downtown Oakland, a transit station at the Sea Plane Lagoon, and a Car Share program.
3. A Transit Plus alternative with 3,000 market rate housing units, and 9,000 jobs that would provide BRT to Oakland BART at 12th Street at 5-minute headways, ferry service to San Francisco at 20-minute headways, shuttle connections to San Francisco express buses and downtown Oakland, a transit station at the Sea Plane Lagoon, a Car Share program, and a future extension of the transit service (potentially a BRT) to Fruitvale BART station.

However, no analysis on actual impacts to intersections or street segments was conducted for any alternative. The SAP estimated total traffic trips from Alameda Point after taking credits for transit enhancements for each alternative and then compared them with the PDC alternative trips in the Tubes.

In September 2009, the City prepared a Preliminary Traffic Impact Report for the land use program in the SunCal Initiative. The project included up to 4,346 new housing units, 186 existing low-cost housing, re-use of existing buildings for up to 309 housing units, 350,000 square feet of retail space and approximately 3.2 million square feet of commercial. TDM strategies assumed to be included as elements of the project were a dedicated shuttle service with 15-minute headways during weekday peak hours to the 12th Street BART station in the first phase. The shuttle service would evolve to a BRT service in the later stages of the development with 15-minute headways during peak commute hours and 20-minute headways off peak, expanded Ferry Service at 30-minute headways.

The report concluded that in 2035, with the assumed transportation improvement plan and TDM measures in place, the project would generate 61,561 vehicle trips per weekday, with 5,260 trips in the a.m. peak and 4,927 trips in the p.m. peak. Existing (2007) traffic volumes from Alameda Point were reported at 10,284 vehicles trip per weekday, with 722 trips in the AM peak and 703 trips in the PM peak. The

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transportation program (improvements and TDM) was estimated to provide an overall 33 percent reduction in peak hour traffic volumes for the Project, with an 18 percent traffic volume reduction at the gateways and a 15 percent reduction internal to the City. The report then analyzed intersection Level of Service (LOS) impacts of the net increased trips and determined that with the project transportation improvements in place, several major intersections that currently operate at an acceptable LOS would degrade to an unacceptable LOS with the project. For example, the Webster Street at Ralph Appezato Memorial Parkway intersection would degrade for an existing LOS D to LOS E in both the AM and PM peak periods; the Park Street at Clement Avenue intersection would degrade from LOS D to LOS F in the a.m. peak and from LOS C to LOS F in the p.m. peak; and the Tilden Way/Blanding Avenue/Fernside Boulevard intersection would degrade for an existing LOS B to LOS F in both the AM and PM peak periods

Finally, the City recently conducted traffic counts for the Posey and Webster Tubes in 2009 as part of the City's Traffic Capacity Management Procedure (TCMP), which is a requirement of the Catellus EIR. The TCMP estimates the theoretical reserve capacity in the Tubes based on the free flow capacity of the Tubes. The most recent June 2010 report, which is included as Exhibit 7, determined that the projected remaining capacity in the Posey Tube is 829 vehicles in the AM peak and 1,183 vehicles in the PM peak. The projected remaining capacity in the Webster Tube is 1,533 vehicles in the AM peak and 364 vehicles in the PM peak.

As described above, there are numerous studies that have been conducted on the traffic impacts associated with development at Alameda Point. The Density Bonus Option will result in traffic impacts to the Tubes and to intersections in Alameda and Oakland. Funding and implementation of a forward-thinking transportation program and key transportation improvements will be necessary to minimize, though not always eliminate, the traffic impacts of development at Alameda Point. The ability of the Modified OEA to fund the capital and operational costs associated with the required Alameda Point transportation strategy and mitigation measures will depend on the feasibility of the project.

5. What is the status of meetings with the San Francisco Bay Area Water Emergency Transit Authority (WETA) regarding relocation of the Main Street Ferry Terminal to the Seaplane Lagoon, as envisioned in the SunCal plan?

Staff and SunCal met with WETA on June 3, 2010 to discuss the proposed Modified OEA and the transportation improvements associated with the project. At that meeting, SunCal provided a cost estimate for the new ferry terminal at the Seaplane Lagoon and

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general ferry ridership projections, based on County-wide data related to rail and ferry transit from 2000. WETA and City staff are reviewing the data and will discuss these and other ferry-related issues at an upcoming July 8, 2010 meeting. WETA's initial concerns with relocation of the ferry centered on the impacts associated with the Oakland riders and how ferry service would be provided from Oakland.

Recommended Next Steps

As discussed at previous meetings of the governing boards of Alameda, the term of the ENA between SunCal and Alameda expires on July 20, 2010. The ENA further provides that if SunCal were to complete its Modified OEA and satisfy the remaining two mandatory milestones in the ENA by July 20, 2010 (the Finalized Navy Term Sheet and the DDA as described below), the ENA would automatically extend until such time as the City acted on the project: either by denying the Modified OEA (which action is exempt from CEQA and does not require an EIR), or certifying the pending EIR when it is complete and therefore approving the Modified OEA.

The status of SunCal's remaining ENA requirements is provided below:

1. **Complete Application.** As discussed above, Alameda staff has concluded that SunCal's Modified OEA is complete.
2. **Finalized Navy Term Sheet.** The Finalized Navy Term Sheet (Term Sheet) is one of two remaining mandatory milestones that must be achieved by SunCal before the July 20, 2010 date, according to the ENA. A staff report providing a status report of SunCal's attainment of the Term Sheet mandatory milestone pursuant to the ENA was provided to the governing bodies of Alameda at the June 15, 2010 meeting. As discussed at the June 15, 2010 meeting, Alameda has not engaged the Navy in negotiations of the Term Sheet related to the Modified OEA because of the need for a well-defined project description, a thoughtful phasing plan and a mutually agreed upon project proforma for the Density Bonus Option. As outlined in this staff report, staff continues to have serious concerns with key assumptions in the Project Proforma, and cannot negotiate the project's ability to support a significant land payment to the Navy until these issues of financial infeasibility are resolved. It is unlikely that these issues, in particular, will be resolved and a Term Sheet agreed to by all parties before the upcoming July 20, 2010 date.

As discussed at the June 15, 2010 meeting, SunCal's election to meet with the Navy at the Pentagon concerning the project on June 9, 2010 without providing

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notice or an opportunity to participate to Alameda constitutes a breach of SunCal's obligations under the ENA. At the June 15th meeting, SunCal confirmed at the June 9th meeting that it had asked the Navy to support a six-month extension of the ENA. The Navy did not agree to this request and indicated that all future communication about the project should be directed to the ARRA and the Base Realignment and Closure Program Management Office in San Diego.

3. **Disposition and Development Agreement.** The DDA is the other remaining mandatory performance milestone that must be achieved by SunCal by July 20, 2010, pursuant to the ENA. SunCal can achieve the mandatory milestone for the DDA if both SunCal and Alameda agree on the form and substance of the DDA or if SunCal submits its best and final offer of a DDA acceptable to SunCal. On June 10, 2010, SunCal submitted a draft DDA to staff. Staff is reviewing the DDA and providing comments to SunCal on a weekly basis. Given the complexity of a public-private partnership between SunCal and Alameda for the Alameda Point project, and ultimately, the Navy, it is unlikely that staff and SunCal will agree on the form and substance of the DDA by July 20, 2010, but that SunCal will submit its "best and final offer" as described in the ENA..

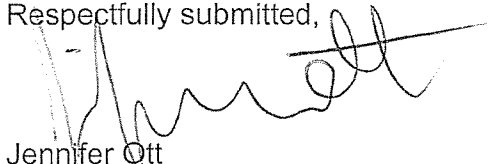
FINANCIAL IMPACT

The proposed request does not modify the financial provisions contained in the ENA regarding reimbursement of staff and Alameda third-party consultant costs. Therefore, there is no fiscal impact to the City's General Fund, Community Improvement Commission, or Alameda Reuse and Redevelopment Authority budgets.

RECOMMENDATION

This report is for information only.

Respectfully submitted,



Jennifer Ott
Deputy City Manager

JO:dl

Honorable Chair and
Members of the Alameda Reuse and Redevelopment Authority

July 7, 2010
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Exhibits:

1. April 26, 2010 SunCal Density Bonus Option Project Proforma
2. May 24, 2010 Final Report, *Alameda Point Pro Forma Market Review*, prepared by EPS - on file in City Clerk's Office
3. June 1, 2010 SunCal Presentation on May 24, 2010 EPS Market Report
4. June 29, 2010 Memorandum, *Response to SunCal's Alameda Point Market Analysis and Feasibility Study Comments*, prepared by EPS
5. June 2010, *Alameda Point Public Services Analysis*, prepared by EPS -- on file in City Clerk's Office
6. June 2010 Final Report, *Alameda Point Financial Feasibility Analysis*, prepared by EPS
7. June 2010 City of Alameda Traffic Capacity Management Procedure

CITY OF ALAMEDA

Memorandum

To: Honorable Mayor and
Members of the City Council

Honorable Chair and
Members of the Alameda Reuse and Redevelopment Authority

Honorable Chair and
Members of the Community Improvement Commission

From: Ann Marie Gallant
Interim City Manager/Interim Executive Director

Date: June 15, 2010

Re: Staff Presentation on Status Report of Finalized Navy Term Sheet
Mandatory Milestone pursuant to ENA Section 4.2.2.

BACKGROUND

In 2006, the Alameda Reuse and Redevelopment Authority (ARRA) funded and prepared a Preliminary Development Concept (PDC) for Alameda Point, approximately 918 acres of the former Naval Air Station Alameda. This effort was completed in concert with Alameda Point Community Partners (APCP), the developer with whom the ARRA then had an Exclusive Negotiation Agreement (ENA). In 2006, the Navy and ARRA, in conjunction with APCP, prepared a Draft Summary of Acquisition Terms and Conditions for the Conveyance of the Former Naval Air Station Alameda (Draft Navy Term Sheet), which was based on the PDC. Since this was a draft, the parties never signed or executed the Draft Navy Term Sheet.

The Draft Navy Term Sheet included the following key terms (See Exhibit 1):

- 1) **Property Subject to Agreement.** The PDC's Phases 1 and 2, excluding Phase 3 and the Northwest Territories (Property).
- 2) **Consideration.** \$108.5 million for the value of the Property in both cash and in-kind consideration for environmental services (i.e., privatized clean-up).
- 3) **Payment Schedule for Consideration.** \$40.3 million provided in the form of environmental services and \$68.2 million, plus interest, paid beginning with the close of the escrow for the 550th residential unit constructed at \$78,115 per unit through the 1,147th unit, and \$89,211 per unit beginning with the close of escrow for the 1,148th unit constructed. Any unpaid balance of the consideration is due and payable on June 30, 2015.

CC/ARRA/CIC

Exhibit 5 to

Agenda Item #3-A

07-20-10

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- 4) **Potential Increase in Cash Consideration.** In the event more than 1,390 residential units are constructed on the Property, there is an additional \$78,115 per unit payment.
- 5) **Potential Decrease in Cash Consideration.** The purchase price of the Property could be reduced by specific amounts if restrictions prohibit residential construction in certain areas.

When APCP subsequently elected not to proceed with the redevelopment of Alameda Point, the ARRA decided to select a new master developer through a competitive Request for Qualifications (RFQ) process to provide the expertise, experience, and financial resources to overcome the remaining planning challenges and to entitle and redevelop Alameda Point. SunCal Companies (SunCal) was one of five respondents to ARRA's RFQ. As part of its response dated December 4, 2006, SunCal expressed a willingness to commit to the \$108.5 million purchase price and payment schedule contained in the Draft Navy Term Sheet, as well as committed to entitle the PDC or another Measure A-compliant project. SunCal was selected as party to the ENA for Alameda Point, in part, because of its commitment to fulfill these obligations.

On July 18, 2007, the ARRA, Community Improvement Commission (CIC), and City of Alameda (together "Alameda") approved an Exclusive Negotiation Agreement (ENA) with SunCal, for redevelopment of Alameda Point. SunCal anticipated a 20-25 percent internal rate of return on its investment in the redevelopment of Alameda Point, which is reflected in the ENA. Subsequent to approval of the ENA, SunCal conducted technical infrastructure and engineering analyses and held several community workshops to inform the preparation of their plan for the site. Through this planning process, SunCal decided that a project consistent with Article XXVI of the City's Charter (Measure A), which restricts housing density in the City, would not be financially feasible for SunCal. This decision represented a change from the commitment SunCal made to Alameda in its response to the ARRA's RFQ.

In March 2008, SunCal requested, and Alameda granted, a First Amendment to the ENA to postpone various mandatory performance milestones (i.e., submission of a Development Concept, Infrastructure Plan, Business Plan, and Entitlement Application, including a Master Plan) by six months.

In October 2008, SunCal requested, and Alameda granted, a Second Amendment to the ENA to (1) transfer ownership interest in SCC Alameda Point LLC to a new entity, which is owned by an affiliate of SunCal and an affiliate of SunCal's financial partner, D.E. Shaw; (2) create a process that allowed SunCal to pursue a ballot initiative for a

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non-Measure A-compliant land use entitlement at Alameda Point expected to occur at an election to be held in early November 2009; (3) extend the term of the ENA by one year to July 2010; and (4) add a Finalized Navy Term Sheet as a mandatory milestone to be achieved by July 31, 2009. As permitted by the ENA, at SunCal's request, the Finalized Navy Term Sheet mandatory milestone was subsequently administratively extended by one year to July 20, 2010, the end of the ENA term.

With regard to the ballot initiative process, the Second Amendment to the ENA provided that if the initiative failed at the anticipated November 2009 ballot, SunCal would be permitted to submit an Optional Entitlement Application (OEA) by January 15, 2010, approximately 60 days subsequent to the November 2009 election. This OEA would be for approval of a project consistent with the City Charter (Measure A compliant) that could be processed within the term of the ENA. The amendment did not provide SunCal with the ability to pursue a second ballot initiative, nor did it contemplate extending the term of the ENA for processing of an OEA.

In December 2008, SunCal submitted to Alameda an Entitlement Application, including a Master Plan, Infrastructure Plan and Business Plan (Plans), in accordance with the ENA. The December 2008 Master Plan was reviewed by Alameda, as well as numerous City boards and commissions, but could not be formally accepted because it was not consistent with the City's Charter, and an Environmental Impact Report had not been completed. The Master Plan did not propose specific development standards for the project nor modifications to the City's development procedures, processes or fee structure.

The ENA also required, as a mandatory milestone, that Alameda and SunCal jointly develop a project proforma by December 19, 2008. Because there was no mutual agreement between SunCal and Alameda on the business terms for the disposition and development of the project by that date, the project proforma mandatory milestone was deemed waived by Alameda under the terms of the ENA.

Based on the Plans and a preliminary project proforma, in December 2008, Alameda staff, in conjunction with SunCal, initiated discussions with the Navy regarding the Draft Navy Term Sheet, including potential revisions to it.

On March 26, 2009, SunCal submitted the Alameda Point Revitalization Initiative (Initiative) to the City. The Initiative included a Charter Amendment, General Plan Amendment, Zoning Amendment, Specific Plan, and Development Agreement (DA), the details of which were not negotiated with Alameda. The Initiative was determined to

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have qualified for the ballot on November 2, 2009 and the City Council set the election for February 2, 2010.

There was no agreement among the Navy, SunCal and Alameda regarding project economics or modifications to the Draft Navy Term Sheet. As a result, discussions did not result in a Finalized Navy Term Sheet. Alameda, SunCal and the Navy decided in August 2009 that the results of the election would determine whether to continue negotiating the Finalized Navy Term Sheet based on the project economics of the plan contained in the Initiative or on a different yet-to-be-determined plan.

Prior to the February 2, 2010 election, SunCal submitted an OEA on January 14, 2010 as permitted by the ENA. The OEA submitted by SunCal consisted of substantially the same plan and processes contained in the Initiative. On February 2, 2010, the Initiative failed at the polls with 85 percent of those participating in the election voting against the Initiative. On February 4, 2010, Alameda provided SunCal with a Notice of Default (NOD) stating that the OEA submitted by SunCal did not meet the requirements of the ENA because the OEA conflicted with the City Charter. The only way for the OEA to avoid conflicting with the City Charter was for SunCal to either submit a Density Bonus Application (DBA) for the project in compliance with the City's Density Bonus Ordinance, which SunCal did not do, or to seek an amendment to the City Charter through a second ballot initiative. However, the ENA affords SunCal no further opportunities to amend the City Charter through a second initiative.

Consistent with the terms of the ENA, SunCal had 30 business days, or not later than March 22, 2010, to cure the default. On March 22, 2010, SunCal submitted a Modified OEA in response to Alameda's NOD, which included a Measure A-compliant project (Base Project) that might be modified at a later date through a DBA.

At a meeting with Alameda staff, SunCal stated that they were not going to submit a DBA at this time consistent with the City's Density Bonus Ordinance because the ordinance requires specific information, such as elevations, which SunCal stated it cannot provide at this stage of the planning process. However, SunCal indicated verbally its commitment to developing a higher-density project that will permit the land uses, units, and density similar to the Specific Plan contained in the Initiative (Density Bonus Option), not the Base Project, and that they would like for the Environmental Impact Report (EIR) and Disposition and Development Agreement (DDA) to include the Density Bonus Option. The Density Bonus Option is essentially the same land use program as the Initiative with the exception of an increased amount of commercial development, one acre of additional park and the inclusion of sustainable uses, such as a solar farm, in the Northwest Territories. SunCal also committed to preparing a master-

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planned DBA at a future date to avoid a piecemeal approach to implementation of a higher density project under density bonus law.

As of mid-May, SunCal had provided minimal information on the proposed Density Bonus Option, including the following submittals: (1) an April 13, 2010 project description letter, (2) a project proforma provided on April 26, 2010 (Project Proforma), and (3) a subsequent project description letter dated May 18, 2010. Alameda sent a letter to SunCal on May 19, 2010 stating that the Modified OEA was incomplete and requested that SunCal submit additional documentation on the Density Bonus Option with sufficient detail so that it can be reviewed and analyzed by staff and the EIR consultants, as well as the community, Planning Board, and Alameda at the same time as the Base Project.

On May 27, 2010, SunCal emailed a letter to the City's Planning and Building Department responding to the City's Notice of Incompleteness letter, including supplemental information to be processed as part of the Modified OEA. Staff is reviewing SunCal's response and meeting with SunCal on a weekly basis to address any remaining concerns regarding the completeness of the Modified OEA. Staff will notify SunCal and the governing boards of Alameda as soon as they have determined whether the information provided to date by SunCal regarding the Modified OEA is sufficient to deem the application complete.

While the Modified OEA technically cured SunCal's default, staff continues to have planning, transportation, and economic concerns with the SunCal plan, as to both the Base Project and the Density Bonus Option. On April 20, 2010, the City of Alameda provided SunCal with a letter identifying some of staff's major concerns with SunCal's current submittal. These concerns were also shared with the Planning Board on May 10, 2010 (continued for further discussion to the May 24, 2010 Planning Board meeting), with Alameda on May 18, 2010, and with the Economic Development Commission on May 20, 2010. On May 28, 2010, SunCal emailed a letter to the Interim City Manager responding to Alameda's April 20, 2010 letter. On June 1, 2010, staff responded to questions from the governing bodies of Alameda raised at the May 18, 2010 meeting. Staff concerns and the additional questions asked by the governing bodies of Alameda at the June 1, 2010 meeting are currently being discussed with SunCal at the weekly meetings. A staff report addressing these issues will be provided at the July 7, 2010 ARRA meeting.

Since submittal of the Modified OEA, Alameda, SunCal and the Navy have not resumed discussions regarding a Finalized Navy Term Sheet. This staff report focuses on a

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status report of SunCal's attainment of the Finalized Navy Term Sheet mandatory milestone pursuant to the ENA.

DISCUSSION

The ENA states that no later than 30 days prior to the date for attainment of the Finalized Navy Term Sheet, staff shall make a presentation to the governing boards of Alameda regarding the status of efforts to attain the Finalized Navy Term Sheet (Section 4.2.2.). Alameda has the right, in its sole and absolute discretion, to extend the milestone for attainment of the Finalized Navy Term Sheet. The Finalized Navy Term Sheet was added to the ENA as a mandatory performance milestone in the Second Amendment to ensure that SunCal diligently pursued agreement with both the ARRA and the Navy on the crucial terms of the conveyance agreement for Alameda Point; which agreement would necessarily be substantially predicated on SunCal and Alameda's agreement on the project proforma. To date, there is no agreement on either the project proforma or the terms of the Navy conveyance.

The Finalized Navy Term Sheet and the DDA are the two remaining mandatory milestones that must be achieved by SunCal before July 20, 2010, according to the ENA. If they are not achieved by such date, the ENA will terminate unless the ENA is extended by Alameda in its sole and absolute discretion. The Navy, Alameda, and SunCal must agree to all of the terms of the Finalized Navy Term Sheet, pursuant to the ENA. Based on the contents of the Draft Navy Term Sheet, the Finalized Navy Term Sheet, in general, should contain terms and conditions related to the amount and timing of payment(s) to be made to the Navy by Alameda (through its master developer,) in exchange for the transfer of land from the Navy; phasing and timing of conveyance; environmental issues, including Navy-retained clean-up obligations, environmental services, if any, environmental insurance, enforceable agreements with regulatory agencies and site management plans; and other key conveyance terms and conditions.

Although SunCal has not presented Alameda with a proposal for land payments to the Navy, SunCal's Project Proforma assumes the following regarding Navy land payments (see Exhibit 2): (1) a \$10 million upfront payment by conveyance of the first phase of land (2012), which includes the \$1 million initial deposit provided by SunCal to Alameda upon execution of the ENA; (2) a per-unit fee of approximately \$52,000 starting in Phase 3 (2017), or the 2,245th unit, for a total land payment of \$108.5 million; and (3) the property conveyed in exchange for the land payment would be the entire 918-acre Alameda Point master development area (i.e., all of Phases 1 through 5 and the Northwest Territories), and not just Phases 1 through 3 as was provided in the Draft Navy Term Sheet. SunCal has not provided Alameda with any other information

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outlining SunCal's proposed changes to the Draft Navy Term Sheet based on the Modified OEA.

Before a Finalized Navy Term Sheet can be achieved, the project description for Alameda Point first must be clearly defined, a realistic phasing plan must be developed and a project proforma based on these project elements must be negotiated between the Navy and Alameda, in conjunction with SunCal. While SunCal has made progress on defining and clarifying its project description in the Modified OEA over the last two months, the Modified OEA has evolved considerably since its submittal and has not yet been deemed complete. SunCal's proposed phasing plan for development and its relationship to the public trust exchange and Navy's environmental remediation schedule for the project has only recently been analyzed and discussed jointly by SunCal and Alameda. Alameda has not engaged the Navy in negotiations of a Finalized Navy Term Sheet related to the Modified OEA in part because of the need for a well-defined project description and thoughtful phasing plan. In addition, Alameda and SunCal have not agreed on the Project Proforma for the Density Bonus Option, which was provided in pdf format to Alameda on April 26, 2010.¹ Alameda has serious concerns with key assumptions in the Project Proforma, as described in greater detail in the June 1, 2010 staff report, and cannot negotiate with the Navy concerning the project's ability to support a significant land payment to the Navy until these issues are resolved. It is unlikely that these issues, in particular, will be resolved and a Finalized Navy Term Sheet agreed to by all parties before the upcoming July 20, 2010 mandatory milestone date.

Although Alameda has not engaged the Navy in negotiations of a Finalized Navy Term Sheet related to the modified OEA, Alameda staff learned late on June 8th that SunCal's senior management team (Robert Hertzberg, Robert Davenport, Frank Faye, Stan Brown and Scott Baugh) would be meeting with Mr. Roger Natsuhara, Principal Deputy Assistant Secretary of the Navy (EI&E) at the Pentagon on June 9th. Neither Alameda nor the Navy officers in San Diego managing the Alameda Point conveyance process received any advance notice from SunCal of this meeting, despite repeated requests by both Alameda Staff and the Navy in San Diego that SunCal provide advance notice to both if and when a meeting with senior officers of the Navy in the Pentagon is scheduled, and that Alameda be given an opportunity to participate in the meeting. Further, the ENA (Section 20.1) requires that SunCal not meet or engage in negotiations with the Navy concerning the project or the project site without giving advanced reasonable prior notice to Alameda and giving Alameda the opportunity to

¹ It has been difficult to corroborate and analyze the detailed assumptions included in the SunCal Project Proforma without an Excel version of the document, which was requested from SunCal some weeks ago, but has yet to be provided.

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negotiate with SunCal and the Navy in such meeting or negotiations, and further provides that SunCal is authorized to communicate directly with the Navy about the project only so long as SunCal promptly keeps Alameda informed of all such communications. The ENA permits such communications so that SunCal may have informal discussions with the Navy about the project; it was not intended to authorize SunCal to meet and negotiate conveyance terms with the Navy without reasonable notice to Alameda and an opportunity for Alameda to participate in to protect its very substantial interest as the current lessee and future transferee of Alameda Point. SunCal's election to meet with the Navy concerning the project, which meeting likely included discussions and negotiations concerning the terms of conveyance, without providing notice or an opportunity to participate to Alameda, much less keeping Alameda promptly informed of such communications, constitutes a breach of SunCal's obligations under the ENA.

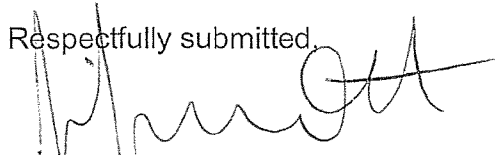
FINANCIAL IMPACT

There is no financial impact.

RECOMMENDATION

This is for information only.

Respectfully submitted,



Jennifer Ott
Deputy City Manager

Exhibits:

1. Draft Summary of Acquisition Terms and Conditions for the Conveyance of the Former Naval Air Station Alameda
2. April 26, 2010 SunCal Density Bonus Option Project Proforma

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July 12, 2010

LOUIS R. MILLER
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EMAIL: SMILLER@MILLERBARONDESS.COM

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED & E-MAIL

Mayor Beverly Johnson
Vice Mayor Doug deHaan
Councilmember Marie Gilmore
Councilmember Frank Matarrese
Councilmember Lena Tam
2263 Santa Clara Avenue
Alameda, CA 94501

Re: *Extension of Alameda Point Exclusive Negotiation Agreement
dated July 18, 2007, as amended (the "ENA")*

Dear Mayor, Vice Mayor and Councilmembers:

Our firm represents SCC Alameda Point, LLC ("SCC Alameda"). We understand that the Alameda staff intends to place on the July 20, 2010 agenda of the City, the ARRA and the CIC (collectively, "Alameda") a vote on whether to extend the term of the ENA referenced above. This vote on the ENA is wholly unnecessary. The ENA will be extended by its own terms and by operation of law. Therefore, we request that the vote be removed from the agenda.

Section 2.2 of the ENA provides for an "automatic extension" of the Exclusive Negotiation if certain milestones have been met. In satisfaction of section 2.2 of the ENA, SCC Alameda has (1) provided a project description meeting the requirements of the ENA and (2) has submitted a Modified Optional Entitlement Application that the City has determined to be complete.

Accordingly, two milestones remain outstanding under the ENA, each with a submission date of July 20, 2010. They are, as follows (see Exhibit B-1 to ENA):

9. Finalized Navy Term Sheet
10. DDA as agreed by the Parties or Developer's best and final offer (as described in section 4.2.1.1)

**CC/ARRA/CIC
Exhibit 6 to
Agenda Item #3-A
07-20-10**

MILLER BARONDESS, LLP

Mayor Beverly Johnson
Vice Mayor Doug deHaan
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A DDA comprising the Developer's best and final offer will be submitted this week, thereby satisfying that milestone. That leaves as the only remaining milestone the Term Sheet with the United States Navy. The City of Alameda, at the instigation and behest of Interim City Manager Ann Marie Gallant, has made satisfaction of this final milestone impossible. As such, satisfaction of this milestone has been frustrated and is excused; and consequently a vote on July 20th is moot and unnecessary.

Because the City of Alameda has prevented satisfaction of the Navy Term Sheet milestone, it cannot assert that failure as a bar to extension of the ENA. Under governing law, "[h]indrance of the other party's performance operates to excuse that party's nonperformance." *Erich v. Granoff*, 109 Cal. App. 3d 920, 930 (1980). Put another way, "[p]revention of performance by the promisee is equivalent to performance by the promisor." *Unruh v. Smith*, 123 Cal. App. 2d 431, 437 (1954); *Crawford v. Pioneer Box & Lumber Co.*, 105 Cal. App. 760, 769 (1930).

All conditions having been satisfied as a matter of law, no vote is necessary or required to extend the ENA; it has been, and is, extended by operation of law. City officials have admitted on the record and in numerous meetings that the City blocked SCC Alameda from concluding the Term Sheet with the Navy. The reasons given by Ms. Gallant in her July 7, 2010 report for the refusal of City staff to allow negotiations to proceed with the Navy are fabricated.

The bad faith intransigence of Ms. Gallant is obvious: In December 2008, a joint pro forma was submitted by the City to the Navy with respect to a prior but similar version of the project. But in May 2009, in furtherance of her self-serving scheme, Ms. Gallant called a halt to the discussions, and since then has blocked them from going forward. It gets worse from there, as explained below.

In derogation of the ENA, the City has gone to great lengths to prevent SCC Alameda from entering into a Term Sheet with the Navy. As permitted under section 20.1 of the ENA, and after being frustrated by the City in any attempts to meet with the Navy, representatives of SCC Alameda met directly with Navy officials and discussed extending the term of the ENA. In this meeting, SCC Alameda reaffirmed its earlier commitment to the Navy staff that it would pay \$108.5 million for the Alameda Point Property. Based on those discussions, the Navy indicated it would send a letter to the City expressing its support for extending the ENA and for SCC Alameda continuing on as the master developer of Alameda Point.

But before the letter could be sent, the Navy was informed by the City that SCC Alameda was "backing away" from its Purchase Price commitment. In fact, nothing could be further from

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the truth; this statement by the City was, and is, a bald-faced lie. SCC Alameda has not indicated to the City (or the Navy) that its Purchase Price commitment has changed in any way. The City's misrepresentations to the Navy caused the Pentagon to decide not to write a letter to the City supporting extension of the ENA. This misrepresentation was one of a number of instances where Alameda communicated with the Navy without involving or alerting SCC Alameda, a violation of section 20.2 of the ENA.¹

The ENA will remain in effect by its terms after July 20, 2010. Any determination not to extend the ENA would be an unlawful violation of the rights of SCC Alameda. Our client reserves all of its rights and remedies herein against the City and all responsible parties.

Sincerely,


Louis R. Miller

LRM:ab

cc (via Certified mail Return Receipt Requested and e-mail):
Interim City Manager Ann Marie Gallant
City Attorney Teresa L. Highsmith

¹ Alameda also violated section 20.3 by intentionally communicating with the Navy causing prejudice to SCC Alameda's rights.

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VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED & E-MAIL

Mayor Beverly Johnson
Vice Mayor Doug deHaan
Councilmember Marie Gilmore
Councilmember Frank Matarrese
Councilmember Lena Tam
2263 Santa Clara Avenue
Alameda, CA 94501

Re: *Ann Marie Gallant*

Dear Mayor, Vice Mayor and Councilmembers:

A. Introduction

Our firm represents SCC Alameda Point, LLC ("SCC Alameda"). We are writing about Interim City Manager Ann Marie Gallant and the harm she has done to the Alameda Point project and are responding to the letters dated May 26 and July 2, 2010 from attorney Michael Colantuono¹ to the Alameda County District Attorney's Office (the "Letters") to the extent they reference SCC Alameda. As you know, SCC Alameda has a contract with the City of Alameda (the "City") under which it is currently in exclusive negotiations for development of the Alameda Point project.

The allegations contained in the Letters regarding SCC Alameda contain outrageous falsehoods and defamatory innuendo. Our client has been working under the exclusive negotiation agreement to develop this project for three years, has done extensive work and has expended millions of dollars in the process. Despite the worst real estate and credit collapse in history, SCC Alameda has persevered and intends to see this important project through to a successful conclusion.

The City committed to having SCC Alameda develop this project because of SCC Alameda's expertise as a developer of large-scale master-planned communities. Section 9.2.1 of

¹ We are informed that Ann Marie Gallant has used these same attorneys to do her work before.

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the July 18, 2007 Alameda Point Exclusive Negotiation Agreement, as amended (the "Agreement") states, "It is because of the qualifications and identity of [SCC Alameda] that Alameda is entering into this Agreement with [SCC Alameda]."

B. Ann Marie Gallant And The Harm She Has Caused

Interim City Manager Ann Marie Gallant intentionally has led the City in the opposite direction for over a year. She has engaged in a malicious campaign to vilify SCC Alameda, destroy the project, impair SCC Alameda's contractual rights, and slander and impugn its integrity. By her own admission, the self-serving secret plan of Ms. Gallant is to oust SCC Alameda from the project and take it over as a "public" project in furtherance of her own interests with herself as executive director. As Ms. Gallant has stated:

"If the agreement is permitted to expire, [SCC Alameda] will lose the right to pursue a multi-million-dollar development of a prime site of bay-front land with prime views of the downtown San Francisco skyline, the Golden Gate Bridge and the San Francisco Bay."

Ms. Gallant lacks the depth of experience to develop a large-scale master-planned community such as Alameda Point; her scheme would cause severe harm to the City and its residents, and likely lead to the demise of the project itself. The one thing that Ms. Gallant does appear adept at, however, is manipulating the legal process to serve her objectives and making false and scurrilous allegations against her perceived enemies.²

² Here is some background on the ambitious Ann Marie Gallant. As reported in the *Desert Hot Springs News and Views* on September 21, 2005:

"According to the Desert Sun, Candidate A, now identified as Ann Marie Gallant accepted her first position as a city manager in 2004. That position was in Gustine, California where she signed on under a three year contract.

According to the Desert Sun and other newspapers, Gallant left the position in Gustine after serving there less than a year, this to take a position in April 2005 as the King City, California city manager where she now is employed.

This is September 2005. And that being the case, if the council had given her the job here in Desert Hot Springs, it would have been her third job as a city manager in two years.

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There are other instances where Ms. Gallant has destroyed plans and communities in the past—for example, she led Desert Hot Springs into being the one city in the Coachella Valley not to embrace the Multiple Species Habitat Conservation Plan. She also destroyed the general plan process that Desert Hot Springs had spent over a year and a million dollars on.

Ms. Gallant has shown she will stop at nothing to accomplish her scheme. We are informed that she has been secretly supplying information to opponents of the Alameda Point project and destroying emails to cover her tracks.³ Ms. Gallant was also caught trying to over-bill SCC Alameda on the project. Engaging in wrongdoing is bad enough; destroying evidence and covering-up is even worse.

When SCC Alameda was chosen to develop this project, Councilmembers referred to the development as a “public – private” partnership and assured SCC Alameda that it would be treated accordingly. In the last year, since Ms. Gallant entered the scene, SCC Alameda has been treated as an enemy rather than a partner; Gallant has pursued every opportunity to create roadblocks to SCC Alameda’s development of the project.

We are writing to put you on notice that Ms. Gallant is exposing not only herself, but also the City and possibly other City officials to serious legal claims seeking millions of dollars in damages. SCC Alameda has worked long and hard on this project and is now being dragged through the mud, causing potentially very substantial harm to its reputation and business as a result.

If you are an employer looking at a resume that contains this type of job history, you consider the person a job jumper.”

Ms. Gallant was nonetheless hired by Desert Hot Springs and according to a report in the August 14, 2007 *Press Enterprise*, Ms. Gallant resigned from her position with Desert Hot Springs during a closed session meeting of the City Council that included her job performance review.

Along the way, the same Ann Marie Gallant was fired by the City Manager of Carson, whereupon she turned around and filed suit against the City.

³ SCC Alameda is making a Public Records request for these emails and other documents.

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C. The Libelous Letters

The timing of the release of the aforesaid Letters is no coincidence. By wrapping SCC Alameda into the character assassination of Councilmember Lena Tam, the strategy of Ms. Gallant is to co-opt or preclude Ms. Tam's vote—and thereby “rig” the vote—scheduled for July 20, 2010 regarding extension of SCC Alameda's exclusive negotiation period. Ms. Gallant is using intimidation tactics to impede the progress of this project.

She is sending a clear message to the other City Councilmembers: Support Ms. Gallant or you could be the next Councilmember dragged through the mud. She is supposed to serve the City, not inflame everybody and everything.

The Gallant scheme is being carried out under the guise of an “independent” investigation into alleged wrongdoing by Councilmember Tam. Far from independent, this attack was designed to taint the process and deprive SCC Alameda of a fair vote on July 20th. The allegations as to SCC Alameda are not just fabricated—they are libelous *per se*.

The allegations in the Letters about SCC Alameda are absurd. One claim is that Ms. Tam blind copied a SCC Alameda executive on her own email expressing dissatisfaction and disappointment with respect to the performance of the City Attorney. So what? This is a free country, and Ms. Tam had and has the right to express her view to whomever she chooses.

Based on what even the Letters admit are “inferences” and employing buzzwords like “more likely than not,” the Letters conclude that Ms. Tam provided privileged information to SCC Alameda executive Frank Faye. It is apparent that Ms. Gallant, and the attorney she hired to write the Letters, have over-active imaginations.

These parties—Ms. Tam and the SCC Alameda executives—were in frequent and open communication about the Alameda Point project. The context of the communications alleged in the Letters was that Ms. Tam was making inquiry of Mr. Faye whether SCC Alameda intended to post a particular item on its website, and Mr. Faye told her they were not. The Letters are legalistic back-stabbing.

The damage to our client's reputation and business is potentially great and far in excess of what the City treasury could sustain. By virtue of Ms. Gallant's reckless acts, including the Letters, our client is being maligned and accused of criminal conduct. Ms. Gallant and the City know perfectly well that these allegations are absurd.

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We therefore urge the City to take a long and hard look at the actions of Ms. Gallant and investigate what she has done and her fitness to serve as a City official. Hiring counsel at public expense in furtherance of a self-serving personal agenda, and commissioning that counsel to prepare these Letters, could subject the City to millions in liability.

These actions have harmed and damaged our client with the City and its residents and with the Navy as well. There was and is absolutely no need for and no basis for Ms. Gallant dragging our client into her vendetta against Lena Tam. By doing so, she is harming the City of Alameda.

Our client reserves all rights and remedies herein including, but not limited to, claims against Ms. Gallant, the City of Alameda, the attorneys who authored the Letters, and all other responsible parties (the Letters are defamatory and, as such, are not protected by any claim of privilege).

Sincerely,


Louis R. Miller

LRM:cc

cc (via Certified mail Return Receipt Requested and e-mail):

Interim City Manager Ann Marie Gallant
City Attorney Teresa L. Highsmith
Michael G. Colantuono, Esq.

Approved as to Form
Juliana D. McLeod
City Attorney

CITY OF ALAMEDA RESOLUTION NO. _____

DENYING A MODIFIED OPTIONAL ENTITLEMENT APPLICATION INCLUDING A GENERAL PLAN AMENDMENT, ZONING AMENDMENT, MASTER PLAN, AND DEVELOPMENT AGREEMENT PROPOSED BY SCC ALAMEDA POINT LLC. (PLN10-0012).

WHEREAS, the state legislature recognized the economic and social degradation faced by communities with military bases that were ordered to be closed by the federal Base Closure Commission, and in Health & Safety Code Sec. 33492.125 et seq. authorized the City of Alameda to adopt a redevelopment plan covering the lands of the Alameda Naval Air Station to mitigate the very serious economic effects of the base closure; and

WHEREAS, Health & Safety Code Sec. 33492.11 authorized the finding of blight in closed military bases and the City Council in Ordinance No. 2754 found the Alameda Naval Air Station a blighted area; and

WHEREAS, the City of Alameda adopted the NAS Community Reuse Plan in 1996 which established guiding policies, objectives and goals for the redevelopment of a portion of the 960 acres of uplands and 673 acres of submerged lands that comprise the former Naval Air Station at Alameda Point ("Alameda Point"); and

WHEREAS, as the City of Alameda adopted a comprehensive General Plan Amendment in 2003 which incorporated the Community Reuse Plan policies, objectives and goals for the redevelopment of Alameda Point into the City's General Plan; and

WHEREAS, the Community Reuse Plan and General Plan goals, policies and objectives represent the community's guiding principles for the redevelopment of Alameda Point; and

WHEREAS, in July 2007, the Alameda Reuse and Redevelopment Authority ("ARRA"), Community Improvement Commission ("CIC"), and the City of Alameda (together "Alameda") approved an Exclusive Negotiation Agreement ("ENA") with SCC Alameda Point LLC (SunCal), as the Master Developer for the redevelopment of Alameda Point; and

WHEREAS, the purpose and intent of the ENA is to provide a timeframe and framework for exclusive negotiations between Alameda and SunCal concerning the terms of agreements and planning documents (including a finalized Navy Term Sheet, a disposition and development agreement, a project pro forma, and development and infrastructure plans) and preparation of land use entitlement applications for the redevelopment of Alameda Point for consideration by Alameda; and

**Resolution #3-A
7-20-10 Joint Meeting**

WHEREAS, in October 2008, the ENA was amended, at SunCal's request, to allow SunCal to pursue an initiative approving a non-Measure-A compliant project for Alameda Point; and

WHEREAS, pursuant to the ENA, in January 2009, SunCal submitted an Optional Entitlement Application for consideration by Alameda in the event Measure B was defeated;

WHEREAS, SunCal's initiative, "Measure B," appeared on a special election ballot in February 2010 and was rejected by the Alameda voters by a margin of 85.4% to 14.6%; and

WHEREAS, subsequent to the defeat of Measure B, SunCal submitted the Modified Optional Entitlement Application ("Modified OEA") requesting approval of an amendment to the City of Alameda General Plan, an amendment to the City of Alameda Municipal Code and Zoning Ordinance Amendment including adoption of a Master Plan, and approval of a Development Agreement; and

WHEREAS, on July 20, 2010, the City Council of the City of Alameda held a public hearing on SunCal's application for approval of the Modified OEA examined pertinent reports, plans, maps and other documents, and considered the testimony and written comments received.

NOW, THEREFORE, the City Council makes the following findings and determinations concerning the Modified OEA:

A. The Modified OEA and Project Uncertainty

1. The Modified OEA requests text and map amendments to the City of Alameda General Plan, adoption of a new Alameda Point Community Plan, text and map amendments to the City of Alameda Zoning Ordinance, approval of an Alameda Point Master Plan, and adoption of a Development Agreement pursuant to California Government Code sections 65864 et seq. These text and map amendments include a proposed new General Plan land use classification of "Alameda Point Master Plan" for the project site, and a rezoning of the project site to "MX, Mixed Use Planned Development District."
2. The proposed project described in the Modified OEA consists of the "Base Project" and the "Density Bonus Option" under which the residential density of the Proposed Project would be increased pursuant to the City's Density Bonus Ordinance. The Modified OEA proposes a mixed-use land use program with residential, commercial, retail, hotel, civic, public trust, marina and parkland uses. It also includes a range of public transportation improvements, including relocation of the ferry terminal, a bus rapid transit (BRT) system, and transportation demand management

measures. The Modified OEA presents essentially the same land use program as the Measure B initiative, with the exception of an increased amount of commercial development, one acre of additional park and the inclusion of sustainable uses, such as a solar farm, in the Northwest Territories.

3. The Base Project consists of up to 3,712 residential units and up to 4.57 million square feet of commercial development on the project site. The residential density across the project site under the Base Project would generally range from 4 to 19 dwelling units per acre. Under the Density Bonus Option, SunCal seeks the right to increase the overall project density of the project by approximately 30% for a total of 4,845 residential units. However, no minimum development obligations, either for housing or commercial development, are provided.
4. The Modified OEA provides minimal certainty about how the property will ultimately be developed. Many specifics about number, location and density of residential units, amount and type of commercial development, site design, the transportation system, and sustainability measures have not been provided. This uncertainty makes it extremely difficult to plan appropriately for infrastructure, transportation and traffic, City services and other key project elements. It also makes public financing – in the form of assessment or community facilities districts, tax increment bonds, and affordable housing bonds – very difficult to implement and administer in order to ensure timely and adequate funding for infrastructure and services.
5. There is also substantial uncertainty regarding the relative timing of development of the residential and commercial components of the project. The timing of the residential and commercial components relative to each other can result in widely differing impacts on the jobs/housing balance, traffic congestion, public financing, transportation and infrastructure needs and provision of City services. The Modified OEA establishes maximum development capacity for each phase, but does not link development of housing to commercial development. Under the Modified OEA, the housing units could be built in each phase up to the maximum allowed without any commitment or requirement to provide the associated commercial development that is necessary to create jobs and is essential to a mixed-use development.
6. The Modified OEA ensures maximum flexibility for future developers of Alameda Point to respond to future market conditions and avoids or delays commitments regarding specific land uses, design requirements, infrastructure, services, or operations. While

a certain degree of flexibility is necessary to enable the master developer and vertical builders to respond to changing market conditions, the Modified OEA does not provide sufficient upfront commitment regarding the actual project SunCal intends to develop despite the requests of staff, the Council and Board and the community. Many of the build-out scenarios possible under the Modified OEA are not consistent with the community's guiding principles for Alameda Point.

7. These deficiencies in the Modified OEA reflect important differences in objectives between the City and SunCal. The Modified OEA maximizes flexibility and minimizes commitments that could result in future costs and limitations on vertical developers, which could ultimately affect the sales price of land. While Alameda has acknowledged the need for flexibility to account for changing market and technical conditions over the life of a long-term project, a balance needs to be struck between flexibility and provision of meaningful commitments to the community. The Modified OEA does not reflect that balance.

B. Economic Development and Jobs/Housing Balance

1. The need for a mixed-use plan for Alameda Point that replaces the jobs lost when the Naval Air Station was closed has been repeatedly emphasized in all planning documents relating to Alameda Point, including the 1996 Community Reuse Plan, the 2003 General Plan Amendment and the 2006 Preliminary Development Concept (PDC). Section 9.1 of the General Plan provides that redevelopment should create a mixed-use environment at Alameda Point, result in replacement of jobs lost due to cessation of Naval operations and foster economic growth and development that benefits the community at large. Studies prepared by the Metropolitan Transportation Commission, State of California (Statewide Transit-Oriented Development Study), Urban Ecology (Blueprint for a Sustainable Bay Area), the Greenbelt Alliance, the American Planning Association and others support Alameda's determination that transit-oriented, mixed use development is critical to the successful redevelopment of Alameda Point.
2. In response to these policies, the City Council through its preparation of the 2006 PDC stipulated that future development of plans for Alameda Point should include preparation of an economic development strategy for Alameda Point in order to: (1) consider Alameda Point's opportunities and constraints for attracting commercial development; (2) evaluate the strengths and weaknesses of Alameda's and the region's other existing and

proposed commercial and business park areas; and (3) identify how best to position Alameda Point competitively for future commercial and business park development in order to maximize job generation and to ensure a truly mixed-use community. The ability and willingness to implement this strategy was one of the criteria for selection of the Master Developer for Alameda Point.

3. Notwithstanding the requirement of these plans, and despite repeated requests by Alameda, the Modified OEA has no such plan or strategy for the commercial components of the Proposed Project: it provides a maximum (but no minimum) development envelope for commercial buildings and a list of permitted and conditionally permitted non-residential uses. There is no certainty regarding the amount and type of commercial development and the resulting impact on the jobs/housing balance.
4. For the redevelopment of a mixed-use community at Alameda Point to be successful, a development plan must include a well-considered economic development strategy and commercial business plan. A successful economic development strategy that can attract new businesses to occupy the former Navy buildings will be key to preserving the historic resources on the property. Ensuring a mix of jobs, housing, and services is vital to ensuring the economic health of both the local and regional economy and to minimizing traffic congestion and air quality impacts locally and regionally. Creating such jobs requires a comprehensive and well-designed economic development strategy. Particularly in the current economic climate, a comprehensive economic development plan is essential to creating a successful mixed-use development, and should be an integral part of the overall plan rather than an afterthought or a simple zoning designation. The absence of such any such plan is a critical flaw in the Modified OEA.

C. Transportation Planning and Traffic Impacts

1. The redevelopment of Alameda Point also presents a unique opportunity to create a comprehensive and integrated transportation system that not only serves future residents and employees at Alameda Point, but also improves the citywide transportation system for all residents of Alameda. The transportation plan for Alameda Point is a key component of the project. Land use and transportation must be two equal parts of a whole plan for Alameda Point given the transportation constraints confronted by Alameda, as an island city.
2. The 1996 Community Reuse Plan and the 2003 General Plan Amendment identify transportation as one of the greatest

constraints affecting redevelopment of Alameda Point. The City's transportation system is severely constrained and there is little capacity in the transportation system to add more housing which adds vehicles to the already constrained AM outbound and inbound PM commutes. Section 9.1 of the General Plan provides that redevelopment should promote the use of alternative modes of transportation to reduce present and future traffic congestion, and General Plan Policy 9.2e expressly requires new development to be transit-oriented.

3. The Modified OEA, as well as SunCal's previous planning documents, have done little or nothing to advance these policies or build on previous transportation planning efforts. Among other elements, the proposed BRT and ferry improvements and services are likely to be crucial in ensuring that the final phases of the project are completed. However, the Modified OEA is not based on any new transportation studies and has made little to no progress addressing any of the key issues regarding BRT that have been pending since 2006, including preferred alignments (instead referencing staff's preferred alignment), location of dedicated and queue-jumping lanes, operation of the BRT system in Oakland, operating entities, and system costs and financing.
4. The Modified OEA likewise fails to address key issues regarding ferry service, including ridership projections; ferry terminal relocation, amenities and construction and maintenance costs; funding requirements and operational subsidies; the sustainability of a bifurcated Oakland/Alameda ferry service; and obtaining preliminary support for a plan from WETA.
5. The Modified OEA does not adequately address these complex transportation issues. Based upon the 2003 General Plan Amendment EIR and the 2010 analysis evaluating the traffic impacts of Measure B, it can be determined that the proposed project is not compatible with the capacity of the transportation system and will result in severe congestion and delays for automobiles and other forms of transit, with associated significant air quality impacts.

D. Wildlife Refuge Impact Area

1. The General Plan requires that development be consistent with preservation of the Wildlife Refuge Impact Area (General Plan Policies 9.3.k, 9.3m, and 9.3o). One of the last habitats for the endangered California Least Tern is located on the former runways of Alameda Point. All previous plans and policies for Alameda Point have endorsed the protection of the least-tern habitat at

Alameda Point consistent with the recommendations of the United States Fish and Wildlife Service (USFWS), as determined by their 1999 Biological Opinion (BO).

2. According to the USFWS BO, a portion along the western edge of the master-developer footprint (Buffer Zone) should not include buildings and residential uses that will result in potential noise, lighting, and predator impacts to the endangered birds and their fledglings. Notwithstanding these plans, policies and recommendations, the Modified OEA proposes to build homes in this Buffer Zone. The land use plan in the Modified OEA is thereby in conflict with General Plan Policies 9.3k, 9.3m, and 9.3o, which prohibit residential development in areas deemed necessary to protect endangered species.

E. Financial Feasibility

1. The ENA provides that a pro forma shall be prepared for the project, which shall show the internal rate of return (IRR) to SunCal for the project and shall reflect that, subject to Alameda's provision of certain public financing to be determined in Alameda's sole discretion, the pro forma for the project shall provide for future fiscal neutrality for Alameda and shall preserve the current fiscal neutrality with respect to Alameda's General Fund, including funding for normal and customary municipal services, such as police and fire.
2. After receipt of SunCal's proposed project pro forma in April 2010, Alameda contracted with a real estate economics consulting firm, Economic & Planning Systems (EPS), to evaluate the project pro forma, including a review of the residential market assumptions that serve as the basis for the amount and timing of revenue projections in the project pro forma and a financial feasibility analysis to evaluate the effects of changes to the pro forma on project feasibility. Alameda also contracted with EPS for preparation of a fiscal impact analysis to determine whether the proposed development would achieve Alameda's policy of fiscal neutrality, balancing the City's cost of providing municipal services against public revenues generated by the project.
3. EPS's conclusions following this review are summarized in three reports - the Alameda Point Pro Forma Market Review dated May 27, 2010 (EPS Market Report), the Alameda Point Financial Feasibility Analysis dated June 2010 (EPS Financial Feasibility Report) and the Alameda Point Public Services Analysis dated June 2010 (EPS Fiscal Report) - and in a memorandum from EPS, dated June 29, 2010, responding to SunCal's comments on the

EPS Market Report. EPS and staff determined that SunCal's Project Pro Forma reflected a number of overly optimistic assumptions regarding future base home sales prices, price premiums, appreciation in home prices, direct construction costs, cost escalation, key transportation and infrastructure costs and infrastructure construction contingency, which were not supported by sound data and analysis. These overly optimistic projections, which did not take into account significant changes in the real estate market in recent years, resulted in overestimating project revenues and underestimating project costs.

4. In the EPS Fiscal Report, EPS also determined that revenues dedicated to Public-Works related services would be insufficient to fully fund costs of road-related maintenance, urban runoff and sewer services, and other service costs related to the project. EPS concluded that these shortfalls, which could reach nearly \$5 million annually at buildout, would require mitigation measures, such as payments from SunCal and funding from assessments specific to Alameda Point, and could adversely affect Citywide maintenance services, if the project is infeasible.
5. Based upon the findings of the EPS Financial Feasibility Report, it can also be determined that there is a high risk to the community of Alameda that the project will not be able to adequately fund the annual operating costs to provide the transportation services necessary for the project. Without adequate financial support for transit services on an annual basis, the project will result in unacceptable congestion and related air quality impacts as project residents are required to use their personal automobiles instead of using alternative transportation services provided by the project. This additional congestion and air quality impacts will be a detriment to the quality of life for all Alameda residents dependant on the limited available capacity of the existing transportation system.
6. SunCal has had the opportunity to review EPS's reports and recommendations and to prepare and present its own financial analyses to EPS, Alameda staff and the governing boards of Alameda. This process has resulted in modification of some of the assumptions in the SunCal project proforma, but there remain significant discrepancies between SunCal's revenue and cost projections and those projected by EPS. EPS has determined that if more realistic assumptions regarding project revenues and costs were substituted for those in SunCal's project pro forma, the result would be an IRR on the project substantially below the minimum required by SunCal, as reflected in the ENA. EPS also conducted sensitivity analysis to determine the impact on project feasibility if

the market experienced stronger-than-expected recovery and/or the project commanded higher-than-expected home prices and home premiums or experienced lower-than-projected costs. Even with these more optimistic assumptions, the resulting return on investment would still be substantially lower than the 20-25 percent IRR deemed minimally necessary by SunCal.

7. Based upon EPS's evaluation, and analysis by Alameda's staff, and after due consideration of SunCal's responses to EPS's conclusions, Alameda has serious concerns about the financial viability and fiscal neutrality of the Proposed Project. There is considerable risk that the Modified OEA will not be able to support the proposed transportation improvements and program, public benefits, fiscal neutrality, as well as a significant land payment to the Navy.
8. SunCal's financial projections also rely on the assumption that 100% of all available housing and non-housing redevelopment tax increment financing (in excess of \$200 million) will be dedicated exclusively to this project, a discretionary determination that that could be affected by future State takeaways or future discretionary decisions made by Alameda's governing bodies and whose outcome could well prove to be inconsistent with SunCal's assumptions.
9. SunCal has not provided financial guarantees reasonably necessary to assure Alameda and the community that the project will be carried out as planned. Section 3.6 of the ENA recognizes the importance of having a financially secure developer or developer partner. Section 3.6.4 requires "[a]ppropriate financial assurances, which may include performance and payment guarantees, to assure development of conveyed phases."
10. In light of the serious discrepancies between the project pro forma and the opinions of Alameda's professional consultants and staff, and in the absence of financial guarantees from SunCal that the project will be carried out as approved, the Proposed Project presents an unacceptable financial risk for Alameda, which could lead to additional costs to Alameda and unacceptable conditions that are detrimental to the general welfare of the community. The Proposed Project could expose the City of Alameda and the residents of Alameda to significant risks, including, (1) that SunCal cannot provide the financing commitments necessary to implement the Proposed Project and, as a result, does not proceed with development of the site; (2) that SunCal commences construction, but the Proposed Project does not perform to the levels projected in the project pro forma, and, therefore, future phases of development

are abandoned, or (3) that SunCal develops the Project, but because the performance of the Project was significantly below projections in the project pro forma, public benefits and transportation improvements are not delivered to the levels committed, shifting burdens to the community while depriving it of the promised benefits.

In light of the overwhelming defeat in February 2010 of Measure B, which proposed a project substantially similar to the Modified OEA; the substantial uncertainties regarding the size, type and timing of the project that will ultimately be built; the absence of key planning elements required by applicable City policies, including an economic development strategy and a comprehensive transportation plan; the conflicts with goals and policies in the General Plan and Community Reuse Plan; and the financial uncertainties and risks of the Modified OEA and the lack of appropriate financial guarantees. and based upon review and consideration of the applicable documents, the input of SunCal and the public, and after due consideration and deliberation regarding SunCal's application for approval of the Modified OEA, the City Council has determined that the application for Project Entitlements should be denied.

THEREFORE BE IT RESOLVED that the City Council of the City of Alameda hereby denies the Modified OEA, including the proposed General Plan Amendment, Zoning Amendment, Master Plan, and Development Agreement (PLN10-0012).

* * * * *

I, the undersigned, hereby certify that the foregoing Resolution was duly and regularly adopted and passed by the Council of the City of Alameda in a regular meeting assembled on the 20th day of June, 2010, by the following vote to wit:

AYES

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the seal of said City this 21st day of June, 2010.

Lara Weisiger, City Clerk
City of Alameda

UNAPPROVED
MINUTES OF THE SPECIAL JOINT CITY COUNCIL AND
PUBLIC UTILITIES BOARD (PUB) MEETING
TUESDAY- -JULY 6, 2010- -5:00 P.M.

Mayor Johnson convened the Joint Meeting at 5:10 p.m.

Roll Call – Present: Councilmembers deHaan, Gilmore, Matarrese, Tam, and Mayor Johnson; and Board Members Gallant, Holmes, McCahan, and McCormick – 9.

Absent: Board Member Hamm – 1.

Note: Councilmember Tam was not present for Anticipated Litigation [paragraph no. 10-CC].

The meeting was adjourned to Closed Session to consider:

(10- CC/PUB) Conference With Legal Counsel – Existing Litigation; Significant Exposure to Litigation Pursuant to Subdivision (b) of Section 54956.9; Name of Cases: Vectren Communication Services v. City of Alameda, Acting By and Through Alameda Municipal Power; Bernard A. Osher, Trustee v. City of Alameda, et al City of Alameda on Behalf of Itself and Alameda Municipal Power, et al v. Nuveen Municipal High Income Opportunity Fund, et al.

(10- CC) Conference with Legal Counsel – Anticipated Litigation; Initiation of litigation pursuant to subdivision (c) of Section 54956.9; Number of cases: One.

(10- CC) Liability Claims (54956.95) – Workers' Compensation Claim; Claimant: Esperanza Sanchez; Agency Claimed Against: City of Alameda.

Following the Closed session, Mayor Johnson announced that regarding Anticipated Litigation, the City Council met in Closed Session with its Legal Counsel and outside counsel, Michael Colantuono, to discuss evidence of serious official misconduct by Councilmember Lena Tam regarding, among other things, providing attorney-client privileged, personnel, and other confidential information to SunCal, International Association of Fire Fighters, and other parties against the interest of the City of Alameda and its taxpayers, and to consider whether to enjoin Councilmember Tam to prevent further conduct of this type; two investigatory reports, each with evidence of alleged official misconduct by Councilmember Tam, have been independently prepared by outside counsel, Michael Colantuono, and provided to the District Attorney; because this matter is now before the District Attorney, and since the City has requested that the evidence be reviewed by the Alameda County Grand Jury, the City Council has deferred any decision to pursue litigation against Councilmember Tam at this time; rather, in the interest of full public disclosure and to afford Councilmember Tam the

ability to review these reports, the City Council has voted to waive its attorney-client privilege, thereby enabling release of the investigatory report this evening to the public; the City Council's decision in this regard was made in the best interest of open government here in Alameda; the City Council looks to the District Attorney and the Grand Jury to do justice in this matter; the District Attorney's office has no objection to the City Council releasing these reports; a copy of the investigatory reports will be available in the City Clerk's office; additionally, a limited number of copies are available this evening for review and will be distributed in the foyer at the conclusion of this statement; if sufficient copies are not available, please leave your name and contact information on the card in the lobby, and the City Clerk will forward a copy to you; the vote to release this information to the public was: Mayor Johnson – yes; Vice Mayor deHaan – yes; Councilmember Gilmore – yes; Councilmember Matarrese – yes; for obvious reasons, Councilmember Tam was not permitted to participate in this Closed Session;

* * *

Mayor Johnson called a recess at 8:05 p.m. and reconvened the special meeting at 8:15 p.m.

* * *

Following the recess, Mayor Johnson announced that regarding Existing Litigation, the Council/Board received a briefing on the status of the telecom litigation and provided direction to the litigation team; regarding Liability Claims, Council received a briefing from Legal Counsel and provided direction on settling the claim.

Adjournment

There being no further business, Mayor Johnson adjourned the Joint Meeting at 7:40 p.m.

Respectfully submitted,

Lara Weisiger
City Clerk

The agenda for this meeting was posted in accordance with the Brown Act.

UNAPPROVED
MINUTES OF THE REGULAR CITY COUNCIL MEETING
TUESDAY- -JULY 6, 2010- -7:00 P.M.

Mayor Johnson convened the meeting at 8:06 p.m.

ROLL CALL - Present: Councilmembers deHaan, Gilmore, Matarrese, Tam
and Mayor Johnson – 5.
Absent: None.

AGENDA CHANGES

(10-___) Mayor Johnson announced that the Public Hearing to Consider Approving Tentative Parcel Map No. 9876 [paragraph no. 10-___] would be continued to July 20, 2010.

PROCLAMATIONS, SPECIAL ORDERS OF THE DAY & ANNOUNCEMENTS

(10-___) Presentation of Certificates of Service

Mayor Johnson presented certificates of service to Jeff Cambra, Housing and Building Code Hearings and Appeals Board; Karen Butter, Library Board; Andrew Cunningham, Planning Board; Ann McCormick, Public Utilities Board; and Michael Krueger, Transportation Commission; and commended the following members not in attendance: Roberto Rocha, Civil Service Board; Mark Irons, Historical Advisory Board; Anne Cook, Planning Board; and Robert McFarland, Transportation Commission.

CONSENT CALENDAR

Mayor Johnson announced that the Recommendation to Accept the Quarterly Sales Tax Report [paragraph no. 10-___] and the Ordinance Approving Amendment to Master Plan [paragraph no. 10-___] were removed from the Consent Calendar for discussion.

Councilmember Tam moved approval of the remainder of the Consent Calendar.

Councilmember Matarrese seconded the motion, which carried by unanimous voice vote – 5. [Items so enacted or adopted are indicated by an asterisk preceding the paragraph number.]

(*10-___) Minutes of the Regular City Council Meeting Held on June 15, 2010. Approved.

(*10-___) Ratified bills in the amount of \$4,447,643.92.

(10-___) Recommendation to Accept the Quarterly Sales Tax Report for the Period Ending December 31, 2009.

Councilmember Tam stated having the City's sales tax update included in the Chamber of Commerce and Park Street and Webster Street Business Districts' newsletter would be good.

The Interim City Manager stated Hinderliter de Llamas and Associates, the new consultant, provides the newsletter to the City for free.

Councilmember Tam inquired why the Marina Village Business Park has the highest decline in sales transactions; stated a lot of the 25 top sales tax contributors are not at Marina Village, with the exception of Lucky Market.

The Deputy City Manager – Administrative Services responded that she would get back to Council on the matter.

Councilmember Tam requested clarification of the 10% decrease [in revenue] being due to a one-time allocation adjustments by the Board of Equalization.

The Interim City Manager stated cities initiate appeals to the Board of Equalization based upon sales tax possibly being attributed to another jurisdiction; every quarter has a self correcting method; the 10% decrease is not reflective of the Livermore issue.

In response to Councilmember Tam's inquiry regarding the 10% decrease, the Interim City Manager stated the allocation is a one-time allocation adjustment based upon the evaluation for the quarter.

Councilmember Tam moved approval of the staff recommendation.

Councilmember Matarrese seconded the motion, which carried by unanimous voice vote – 5.

(*10-) Recommendation to Accept the Work of J.J.R. Construction, Inc. for the Repair of Portland Cement Concrete Sidewalk, Curb, Gutter, Driveway, and Minor Street Patching, Fiscal Year 2009/2010, Phase 10, No. P.W. 06-09-15. Accepted.

(*10-) Recommendation to Accept the Work of Schaaf & Wheeler Consulting Civil Engineers for the Assessment of the City of Alameda Sewer Pump Stations, No. P.W. 06-08-16. Accepted.

(*10-) Recommendation to Adopt Plans and Specifications and Authorize Call for Bids for the Cyclic Sewer Replacement Project, Phase 8, No. P.W. 01-10-03. (Public Works)

(*10-) Resolution No. 14463, "Requesting and Authorizing the County of Alameda to Levy a Tax on All Real and Personal Property in the City of Alameda as a Voter Approved Levy for the General Obligation Bonds Issued Pursuant to a General Election Held on November 7, 2000." Adopted.

(*10-) Resolution No. 14464, "Designating a City Consultant as the Authorized Representative to Examine Certain Sales and Use Tax Records." Adopted.

(*10-) Resolution No. 14465, "Calling for a General Municipal Election to be Consolidated with the Statewide General Election to be Held in the City of Alameda on Tuesday, November 2, 2010, and Requesting the Alameda County Board of Supervisors to Permit the Registrar of Voters to Render Specified Services to the City Relating to the Conduct of Said Election." Adopted.

(10-) Ordinance No. 3018, "Approving Amendment to Master Plan MP05-01 for Grand Marina Village to Reduce the Number of Required Affordable Housing Units." Finally passed.

Councilmember Tam stated at the June 15, 2010 meeting, she stated that having a pro forma would be helpful to understand how Warmington Homes' bottom line would be affected with four less affordable units.

The Planning Services Manager stated that he is sorry that said information has not been included in tonight's staff report; the Warmington Homes' pro forma has not been reviewed; usually, staff does not review private project pro formas; Warmington Homes' financing is based upon 15% affordable housing; Warmington Homes has financing for the first phase; without the change to the Master Plan, Warmington Homes would not be able to continue without finding financing for remainder of the project.

Councilmember Tam stated that she thought the project was a few years in the making; Warmington Homes would have had to secure financing before 2009.

The Planning Services Manager stated Warmington Homes obtained financing under the assumption that the 25% to 15% Citywide rollback would apply to the project.

Councilmember Tam inquired whether Warmington Homes obtained financing with the expectation that Council would allow a rollback to 15%.

The Planning Services Manager responded Warmington Homes thought that the project would automatically be changed with the 15% rollback; Council changed the affordable housing requirement from 25% to 15% Citywide before construction started; the City previously adopted a Master Plan which stated that the Grand Marina Project would have 25% affordable housing units.

Councilmember Gilmore stated Council did not change the affordable housing requirement until December 2009; inquired when Warmington Homes applied for financing.

Mike McClellan, Warmington Homes, responded Warmington Homes delayed the project until last year; stated Warmington Homes knew that Grand Marina was the only project not subsidized with 25% affordable housing; Warmington Homes received

financing based upon ordinance approval; financing is based on six units instead of ten; six low-cost affordable housing units would be provided to the City in very difficult times; two parks would be built in addition to other public improvements.

Councilmember Gilmore inquired whether Warmington Homes received financing after Council changed the ordinance; further inquired whether financing was pursued based on what turned out to be the mistaken impression that Warmington Homes would be entitled to the reduction.

Mr. McClellan responded in the affirmative; stated the project has lasted for six years; referenced financing relates to build out.

Councilmember Tam stated page 6 of the June 16, 2010 minutes notes that Mr. Leaman, Warmington Residential, stated Warmington Homes' financial status would be significantly impacted if Council does not grant the reduction and that Warmington Homes does not have out of pocket cash for the project; page 3 of the staff report states that "further, Warmington Residential and the Community Improvement Commission are negotiating an Exclusive Negotiation Agreement (ENA) for the disposition and redevelopment of the City's Corporation Yard and Animal Shelter as new housing, which will also include new inclusionary units"; requested that the City Attorney clarify when Council would need to authorize negotiations for an ENA with Warmington Homes for sale of property.

The City Attorney stated Council would need to authorize entering into an ENA.

Councilmember Tam inquired whether Council would not need to authorize negotiations; stated the staff report notes that the City is already negotiating an agreement; that she does not recall authorizing negotiations.

The City Attorney responded the matter cannot be discussed [in open session]; stated closed session items are not discussed in open session.

The Interim City Manager stated the developer approached staff after Council's decision regarding the reduction [10 15%] and 2008 black October and indicated that Warmington Homes could go forward and immediately start construction if four units could be taken out; picking up the four units and jump starting the economy would not be difficult given the state of the market, the fact that construction jobs and activity is needed, and the City's focus on new projects coming down the pike with respect to inclusionary, low, and affordable housing; Council would have to approve an ENA and then have Warmington Homes consider looking at expanding the project and possibly purchasing public property on the Marina [Corporation Yard/Animal Shelter] site; one question raised at the June 15, 2010 meeting was whether the process would be defeated if four units were taken out; the City would discuss other projects in the next thirty days that would mitigate the four units and provide a larger vision for affordable units in the City.

Vice Mayor deHaan stated that Councilmember Tam has a valid concern; Council has not given direction to initiate an ENA.

The Interim City Manager stated that Council has not approved an ENA, but has discussed the terms of an ENA.

Councilmember Tam inquired whether procedurally, a closed session announcement would have reflected whether Council gave direction to enter into negotiations toward an ENA with Warmington Homes to sell the Corporate Yard and Animal Shelter property.

The City Attorney responded an appropriate reading out of a closed session item would have happened and did happen; stated any action would have been reflected; the announcement could have been that Council or CIC provided negotiating direction to the Interim City Manager; specific negotiating direction is not spelled out.

Councilmember Tam requested that the City Clerk read the reporting out announcement.

Councilmember Gilmore stated the staff report states that a reduction in affordable units is critical and is a major financial consideration for Warmington Homes; Warmington Homes may enter into negotiations with the City through another deal in the near future; that she has trouble understanding how Warmington Homes would be financially strapped on the Grand Marina project, yet thinks another project could be done.

Mr. McClellan stated Warmington Homes is doing deals; economic times are still bad; Warmington Homes believes that the right marketing level has been found; houses can be produced if the market remains the same; a legitimate land value could be paid based on the values.

The Interim City Manager stated information in the report regarding a potential second phase or another project is not dependent upon tonight's decision; inquired whether Warmington Homes could get financing today with ten affordable units, to which Mr. McClellan responded in the negative.

Councilmember Tam stated the staff report states that a future deal would be an opportunity for the City to promote inclusionary housing in accordance with policy, although the reduction would be made at this time; that she does not believe that the deals are completely separate; Warmington Homes does not have out of pocket cash to build the four units, yet there is some expectation that out of pocket cash would be available to purchase land and affordable housing at the potential new site.

Mr. McClellan stated Warmington Home projects are financed on a project-by-project basis; Warmington Homes is prepared to go forward with the next phase and build out the project; Warmington Homes is looking for other projects that would be successful for everyone.

Vice Mayor deHaan stated opportunities were discussed at the Saturday budget workshop.

The Interim City Manager stated asset management was discussed; tonight's staff report is discussing the Corporation Yard and Animal Shelter; no action would be taken on the matter.

Vice Mayor deHaan moved final passage of the ordinance noting that there might have been some confusion.

Councilmember Matarrese seconded the motion.

Under discussion, Councilmember Matarrese stated the ordinance is consistent with direction given for reducing the percentage of affordable housing; inquired whether the City would receive in lieu fees.

The Interim City Manager responded only if the project does not get built.

Councilmember Matarrese stated the City would be getting public improvements in a sorely needed area; the City would have zero affordable housing units in the project if the ordinance does not pass; six affordable units would be built [if the ordinance is adopted].

Councilmember Gilmore requested that the motion be amended to include that a report be provided on the number of jobs created by the project; stated the construction industry is down 20%.

Vice Mayor deHaan and Councilmember Matarrese agreed to amend the motion.

The Interim City Manager stated job creation should be included in staff reports; one major economic development impact would be job creation.

Mayor Johnson stated jobs would be created without borrowing or stimulus money.

On the call for the question, the motion carried by the following voice vote: Ayes: Councilmembers deHaan, Gilmore, Matarrese and Mayor Johnson – 5. Abstentions: Councilmember Tam – 1.

REGULAR AGENDA ITEMS

(10- __) Resolution No. 14466, "Appointing Jose Villaflor as a Member of the Civil Service Board." Adopted;

(10- __A) Resolution No. 14467, "Appointing Joy Pratt as a Member of the Housing Commission." Adopted;

(10- B) Resolution No. 14468, "Appointing Catherine Atkin as a Member of the Library Board." Adopted;

(10- C) Resolution No. 14469, "Appointing Eric Ibsen as a Member of the Planning Board." Adopted; and

(10- D) Resolution No. 14470, "Appointing Philip Tribuzio as a Member of the Transportation Commission." Adopted.

Councilmember Matarrese moved adoption of the resolutions.

Councilmember Tam seconded the motion, which carried by unanimous voice vote – 5.

The City Clerk administered the Oath of Office and presented certificates of appointment to Jose Villaflor, Joy Pratt, Eric Ibsen and Philip Trubuzio.

CITY MANAGER COMMUNICATIONS

(10-) The Interim City Manager introduced the Interim Police Chief.

The Interim Police Chief made brief comments.

(10-) Senior Safety Program

The Fire Safety Specialist gave a Power Point presentation.

Vice Mayor deHaan inquired how people volunteer or receive help.

The Fire Safety Specialist stated that her contact information is on flyers and brochures.

Vice Mayor deHaan inquired whether stair step light has been considered.

The Fire Safety Specialist responded in the negative; stated the Program has funding for specific things; the Fire Department is actively pursuing more grants.

In response to Mayor Johnson's inquiry regarding a master list, the Fire Safety Specialist responded a database has been initiated.

Mayor Johnson inquired whether people can add a name to the list through the website, to which the Fire Safety Specialist responded people can contact her.

Mayor Johnson inquired whether people are willing to call her, to which the Fire Safety Specialist responded in the affirmative.

Mayor Johnson stated Boy Scouts are doing a great job; inquired whether other service organizations would be used.

The Fire Safety Specialist responded absolutely; stated ensuring that volunteers are able to get up and down a ladder is important.

Mayor Johnson stated an injury to a senior could be permanent.

Councilmember Tam thanked the Fire Safety Specialist for the presentation; stated the Program is a great community service; currently, funding is provided through grants from the Federal Emergency Management Agency (FEMA) and the Community Development Block Grant (CDBG); inquired whether increased funding is needed.

The Fire Safety Specialist responded in the affirmative; stated the Fire Department is looking for more grant funding.

Councilmember Tam inquired how long the grant lasts.

The Fire Safety Specialist responded one year; however, the Fire Department is petitioning for five more months.

Mayor Johnson inquired whether funding could be obtained through the Healthy Home initiative, to which the Fire Safety Specialist responded that she would find out.

REGULAR AGENDA ITEMS

(10-___) Public Hearing to Consider Resolution No. 14471, "Amending Master Fee Resolution No. 12191 to Revise Fees." Adopted.

The Deputy City manager – Administrative Services gave a brief presentation.

Vice Mayor deHaan stated the increase would not be across the board; inquired how to identify fees that would be increased.

The Deputy City Manager – Administrative Services responded said fees are called out in the staff report

Vice Mayor deHaan stated an annual review was done last year.

The Interim City Manager stated a review was done the year before last to determine cost recovery; a Consumer Price Index (CPI) has been done the last two years; usually, every three to five years, a complete fee study is done to see if charges are sufficient which has to do with employees' hourly rate; the City has not performed a complete fee study for four or five years; the CPI will hold the City for a year or two.

Vice Mayor deHaan inquired whether a complete fee study should be done next year, to which the Interim City Manager responded Fiscal Year 2011-2012 would be a good time.

Mayor Johnson stated Mr. Brandt commented that individual building and permit fees seem reasonable but when combined seem higher than other communities; the matter should be reviewed.

Councilmember Gilmore stated that she believes that the Planning and Building Department has reviewed the matter.

Mayor Johnson stated remodeling and on-going maintenance is a critical issue in Alameda.

The Interim City Manager stated a presentation on the issue could be provided under City Manager Communications.

Vice Mayor deHaan stated that he saw a new, detailed breakdown when obtaining a permit; the City cannot charge more fees than needed [to cover costs].

Councilmember Tam stated in 2006, Council adopted a fee schedule to streamline and make things easier for the Planning and Building and Public Works Departments; inquired whether said fees would also be affected by the 1.7% increase.

The Interim City Manager responded that she assumes the City changed the fee schedule to a per unit basis as opposed to a valuation table; some cities held on to the old method because cities made a lot of money; using the valuation table results in charging more than the cost recovery in an administration fee.

Councilmember Tam moved adoption of the resolution.

Councilmember Matarrese seconded the motion, which carried by unanimous voice vote – 5.

(10-) Public Hearing to Consider adoption of a Resolution Approving Tentative Parcel Map No. 9876, Planning Application No. PLN09-0185 – a Parcel Map for the Proposed Subdivision of the Site at 2318 Pacific Avenue into Two Parcels. Continued.

Mayor Johnson announced that the Public Hearing was continued to July 20, 2010.

(10-) Public Hearing to Consider Introduction of Ordinance Revising the City's Sewer Service Charges. Introduced.

The Public Works Director and Mark Hildebrand, Red Oak Consulting, gave a Power Point presentation.

* * *

Councilmember Tam left the dais at 9:36 p.m. and returned at 9:41 p.m.

* * *

Mayor Johnson inquired how air testing works.

Gisa Ju, RMC Water and Environment, responded non-toxic smoke is blown into a sewer and pathways lead smoke to the surface; crews observe what is coming out of yards; smoke cannot be detected from a basement connection.

The Public Works Director and Mr. Hildebrand continued the presentation.

In response to Mayor Johnson's inquiry, the Public Woks Director stated the current commercial additional flow rate is \$1.84 per hundred cubic foot [HCF] and would increase to \$2.81 HCF.

Councilmember Gilmore inquired whether Alameda has an additional issue with its sewer system because the water table is so high.

The Public Works Director responded inflow infiltration would increase if pipes or joints have cracks.

Councilmember Tam stated Slide 18 shows the current rate for a single family home would go from \$14.91 to \$22.09, which is a 48% increase over three years; spreading 48% over three years equals 16% per year; inquired whether she is missing something on Slide 16, which shows 14% per year.

Mr. Hildebrand responded the total amount increases to 48% over three years due to compounding.

Councilmember Matarrese complimented staff on the analysis; stated people know that sewer charges increase by cost of living but cost of living does not account for regulation changes; Emeryville's rates are less, but Emeryville does not perform sewer laterals like Alameda; inquired whether structuring residential rates similar to commercial rates has been considered for the future; stated a two bedroom, one bath home uses much less flow than a four bedroom, three and a half bath home.

Mr. Hildebrand responded a flow-based sewer rate is not commonly considered [for residential rates]; stated administrative costs and data collection could pose a hurdle.

Vice Mayor deHaan stated a lot of seniors have concerns; inquired whether other jurisdictions have some type of reduction for seniors.

The Public Works Director responded Proposition 218 prohibits using sewer rates to buy down for seniors; stated an alternative funding source, such as the General Fund, would be needed to do so.

Mr. Hildebrand stated Proposition 218 prohibits using one person's rate to pay down another person's rate.

Vice Mayor deHaan stated rates would be increased incrementally; requirements have changed; Alameda is in a better position than other cities.

The Public Works Director stated Alameda is ahead of the curve; the Environmental Protection Agency (EPA) is aware that Alameda is taking the lawsuit seriously and is immediately making changes to ensure a funding source is established to take care of anticipated improvements.

Councilmember Gilmore stated requirements coming down from the EPA are another unfunded mandate; the City has to come up with a revenue source; the requirement does not go away if funding is not found; the City would have capital costs plus EPA levied fines on top of everything.

Councilmember Matarrese moved introduction of the ordinance.

Councilmember Tam seconded the motion.

Under discussion, Councilmember Tam stated that Alameda is an island surrounded by the Bay; Bay water quality is very important; the EPA imposed standards are intended to protect the Bay water; the proposed sewer charge increase is the price to pay for high water quality.

On the call for the question, the motion carried by unanimous voice vote – 5.

ORAL COMMUNICATIONS, NON-AGENDA

(10-) Don Shafer, Alameda, provided a handout and discussed parking his trailer at Independence Plaza.

Mayor Johnson inquired whether Housing Authority rules apply to Mr. Shafer's parking problem.

The Interim City Manager responded that she would contact Mr. Shafer.

(10-) Robb Ratto, Park Street Business Association, expressed his support for the new Interim Police Chief.

(10-) Joyce Larrick, Alameda, inquired about the Animal Shelter being closed.

The Interim City Manager stated the matter was not voted upon; if the matter goes forward, the shelter would be relocated.

(10-) David Howard, Alameda, stated workers are in the lobby sweeping light fixtures; inquired whether anything upstairs needs sweeping.

COUNCIL REFERRALS

None.

COUNCIL COMMUNICATIONS

(10-) Consideration of Mayor's nomination for appointment the Historic Advisory Board. Continued.

(10-) Vice Mayor deHaan stated one of the top sales tax producers is Safeway Fuel; Safeway Fuel is no longer providing diesel fuel; Council mandated that diesel fuel be provided; inquired whether the mandate has a sunset.

The Interim City Manager responded that she does not know; stated that she would review the matter.

(10-) Vice Mayor deHaan stated that he sees a marked improvement in vehicles not being stored on streets.

Mayor Johnson stated work still needs to be done on Eagle Avenue.

(10-) Councilmember Tam stated on June 17th, she attended the League of California Cities (LCC) Environmental Quality Policy Committee Meeting; the LCC initiative which would prevent the legislature from taking property and redevelopment taxes from cities has qualified for the ballot; every legislator is very mad that the initiative is being put on the ballot; the meeting had a very heated debate regarding Assembly Bill 1898 which is Assemblywoman Julia Brownley's ban on plastic bags; the ban would require shoppers to bring reusable bags; otherwise shoppers would be charged a nickel per bag up to a twenty-five cent cap.

The Interim City Manager inquired who would get the money, to which Councilmember Tam responded the State.

Councilmember Gilmore inquired whether San Francisco enacted an ordinance on the ban.

Councilmember Tam responded in the affirmative; stated Oakland has tried to enact an ordinance, but the plastic industry demanded that an Environmental Impact Report be prepared to examine the social economic impact of the ban; the legislation has provisions for the California Environmental Quality Act (CEQA) broader than just one city; the LCC annual conference will be in San Diego in September.

(10-) Mayor Johnson stated as a result of the investigatory reports presented to the Council and to the public this evening, she thinks it is incumbent upon all of us to strive harder now to prove not only to ourselves, but to the community we serve, that there is integrity in our public processes, and that special interests do not control Alameda; given the involvement in this matter of John Knox White, who is alleged in the

investigatory report to have illegally received confidential Closed Session materials from Councilmember Tam, and also to have participated in violations of the Brown Act, California's Local Government in the Sunshine Law, she is calling for the immediate resignation of John Knox White from the Sunshine Task Force, as she no longer believes he can service with credibility; unless the City receives Mr. Knox White's resignation prior to the next meeting of the Sunshine Task Force, she will ask the Interim City Manager to agendize his removal for City Council action as soon as possible.

ADJOURNMENT

There being no further business, Mayor Johnson adjourned the meeting at 10:24 p.m.

Respectfully submitted,

Lara Weisiger
City Clerk

The agenda for this meeting was posted in accordance with the Brown Act.

UNAPPROVED
MINUTES OF THE SPECIAL CITY COUNCIL MEETING
WEDNESDAY- -JULY 7, 2010- -6:00 P.M.

Mayor Johnson announced that the City Council attempted to hold a Closed Session meeting tonight on a matter of existing litigation; given the seriousness of the investigatory report against Councilmember Tam and given a concern expressed by a party to the existing litigation questioning the confidentiality of the closed session, Councilmember Tam was asked to voluntarily remove herself from the closed session; Councilmember Tam refused; as a result, the City Council did not proceed any further; the City Council and staff were unable to conduct the City's business; however, under the circumstances, we need to strive to maintain the integrity of the City process while we wait for the decision of the District Attorney.

Councilmember Tam stated that she will not be intimidated; as an elected public official, she still has a job to do and will continue to do it.

(10-____) Conference with Real Property Negotiators; Property: 2221 Harbor Bay Parkway; Negotiating parties: City of Alameda and SRM Associates; Under negotiation: Price and terms. Not heard.

(10-____) Conference with Legal Counsel – Existing Litigation (54956.9); Name of case: Collins v. City of Alameda (Boatworks). Not heard.

Respectfully submitted,

Lara Weisiger
City Clerk

The agenda for this meeting was posted in accordance with the Brown Act.

CITY OF ALAMEDA

Memorandum

To: Honorable Mayor and
Members of the City Council

From: Lisa Goldman
Deputy City Manager

Date: July 15, 2010

Re: List of Warrants for Ratification

This is to certify that the claims listed on the attached check register and shown below have been approved by the proper officials and, in my opinion, represent fair and just charges against the City in accordance with their respective amounts as indicated thereon.

<u>Check Numbers</u>	<u>Amount</u>
230007 - 230386	\$1,470,845.32
V20740 - V20892	\$110,220.73
EFT 877	\$233,492.31
EFT 878	\$11,953.50
EFT 879	\$26,532.60

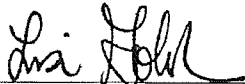
Void Checks:

229739	
229654	(\$134.99)
225310	(\$131.52)
	(\$20.00)

GRAND TOTAL

\$1,852,757.95

Respectfully submitted,



Deputy City Manager

Council Warrants 07/20/10

BILLS #4-B
7/20/2010

CITY OF ALAMEDA

Memorandum

To: Honorable Mayor and
Members of the City Council

From: Ann Marie Gallant
Interim City Manager

Date: July 20, 2010

Re: Award a Contract in the Amount of \$88,974, Including Contingencies, to Roto
Rooter, for Citywide Sewer Mains Video Inspection, Phase 3, No. P.W. 02-
10-08

BACKGROUND

On June 1, 2010, the City Council adopted plans and specifications and authorized a call for bids for citywide sewer mains video inspection, No. P.W. 02-10-08. This year's proposed project will be the third phase of the condition assessment and will clean and video inspect approximately 30,000 linear feet of sewer main.

DISCUSSION

To solicit the maximum number of bids and most competitive price, plans and specifications were provided to 19 separate builders exchanges throughout the Bay Area. A notice of bid was also published in the Alameda Journal. Four contractors submitted bids. The bids were opened on June 21, 2010. The list of qualified bidders, from lowest to highest total project cost, is as follows:

Bidder	Location	Base Bid
Express Plumbing (Non-Responsive)	San Mateo, CA	\$70,410
Roto Rooter	Livermore, CA	\$77,368
NorCal Pipelines	Yuba City, CA	\$78,050
AAA Pipeline Inspection	Citrus Heights, CA	\$90,000

Public Works staff contacted the references provided by Express Plumbing and determined Express Plumbing to be non-responsive due to lack of experience based on the feedback received from the references provided. Public Works staff then contacted several references provided by the next lowest qualified bidder and received positive feedback about the requirements and experience, quality, and timeliness of their work. Staff proposes to award a contract to Roto Rooter for a total amount of \$88,974, including contingencies. A copy of the contract is on file in the City Clerk's office.

FINANCIAL IMPACT

The project is budgeted in the Capital Improvement Program (Project No. 90-84), with monies allocated from the Sewer Enterprise Funds.

MUNICIPAL CODE/POLICY DOCUMENT CROSS REFERENCE

This action does not affect the Alameda Municipal Code.

ENVIRONMENTAL REVIEW

In accordance with the California Environmental Act (CEQA), this project is Categorically Exempt under CEQA Guidelines Section 15306, Information Collection.

RECOMMENDATION

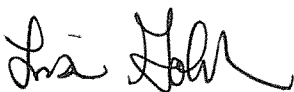
Award a contract in the amount of \$88,974, including contingencies, to Roto Rooter, for citywide sewer mains video inspection, phase 3, No. P.W. 02-10-08.

Respectfully submitted,



Matthew T. Naclerio
Public Works Director

Approved as to funds and account,



Lisa Goldman
Deputy City Manager

BH:PS:gc

Exhibit:

1. Contract (on file in the City Clerk's office)

CITY OF ALAMEDA

Memorandum

To: Honorable Mayor and
Members of the City Council

From: Ann Marie Gallant
Interim City Manager

Date: July 20, 2010

Re: Amend the Consultant Contract in the Amount of \$38,682, Including
Contingencies, to Noll & Tam, for Construction Administration for the
Neighborhood Library Improvement Project, No. P.W. 10-09-29

BACKGROUND

On January 6, 2009, the City Council awarded a consultant contract in the amount of \$298,000, including contingencies, to Noll & Tam for the design work and construction administration of the neighborhood library improvement project, No. P.W. 10-09-29. The project will remodel the West End and Bay Farm Island neighborhood libraries. The construction administration portion of the contract included technical support during the bid and construction phases, review of construction change orders and submittals, approval of substitutions, and re-designs associated with unforeseen conditions.

DISCUSSION

When the consultant contract was originally awarded, the design improvements were to include space planning; Americans with Disabilities Act (ADA) upgrades; replacing or upgrading plumbing, heating, ventilating, electrical wiring, lighting, telecom, roofing, furniture, stacks, counters, paint, and flooring; seismic retrofitting; and asbestos and lead abatement. At the time of the Request for Proposal, it was anticipated that there would not be sufficient funding for all of the health and safety improvements that had been identified at that time. Due to the favorable bidding environment, the City has been able to provide virtually all of the improvements and items from the Library Board's wish list; however, this has increased the scope of work and the diversity of subconsultants and subcontractors during the design and construction administration phases of the project. Noll & Tam has requested additional compensation to complete the contract administration work. Public Works staff has determined that an additional \$38,682 is required to complete the neighborhood library improvement project. The Library staff supports this budget increase. The proposed increase was presented to the Library Board on July 14 for their concurrence. A copy of the amendment to consultant contract is on file in the City Clerk's office.

FINANCIAL IMPACT

The funds for this project are budgeted in the Library Department's account for Capital Improvement Program (05-05), with monies allocated from the Measure O bond proceeds and the bond's accumulated interest. These funds are dedicated solely to improvements for the neighborhood libraries. No General Fund monies are required.

MUNICIPAL CODE/POLICY DOCUMENT CROSS REFERENCE

This action does not affect the Alameda Municipal Code.

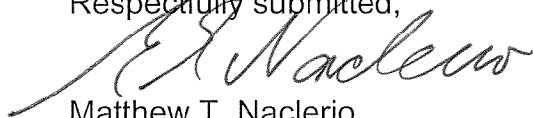
ENVIRONMENTAL REVIEW

In accordance with the California Environmental Quality Act (CEQA), the neighborhood library improvement program is Categorically Exempt under CEQA Guidelines Section 15301(a), Existing Facilities Exterior/Interior Alterations; Section 15301(e), Alterations to Existing Structures of 2,500 Square Feet or Less; and Section 15331, Historical Resource Restoration/Rehabilitation.

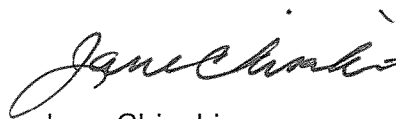
RECOMMENDATION

Amend the consultant contract in the amount of \$38,682, including contingencies, to Noll & Tam, for construction administration for the neighborhood library improvement project, No. P.W. 10-09-29.

Respectfully submitted,

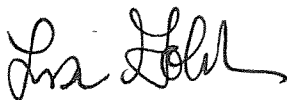


Matthew T. Naclerio
Public Works Director



Jane Chisaki
Library Director

Approved as to funds and account,



Lisa Goldman
Deputy City Manager

BH:LK:gc

Exhibit

1. Amendment to Agreement (on file with the City Clerk's office)

CITY OF ALAMEDA

Memorandum

To: Honorable Mayor and
Members of the City Council

From: Ann Marie Gallant
Interim City Manager

Date: July 20, 2010

Re: Adopt Plans and Specifications and Authorize a Call for Bids for the
Upgrades to the Northside Storm Drain Pump Station, No. P.W. 02-10-06

BACKGROUND

In February 2010, Public Works staff issued a Request for Proposals (RFP) to design and prepare plans and specifications for upgrades to the northside storm drain pump station located at 1253 Marina Square Loop. On April 6, 2010, the City Council awarded a contract to Schaaf & Wheeler Consulting Civil Engineers to assess existing and future storm drain capacity needs; identify improvements required to meet current regulatory standards, including standby power; and prepare plans, technical specifications, and an engineer's estimate for the recommended upgrades. The consultant's design is complete.

DISCUSSION

The proposed project will install a new standby generator with enclosure and fuel tank, replace the existing control panel, and upgrade the System Control and Data Acquisition (SCADA) system hardware/software. A copy of the plans and specifications is on file in the City Clerk's Office.

FINANCIAL IMPACT

The project is budgeted in the Capital Improvement Program (Project No. 99006), with monies allocated from the Urban Runoff fund. No General Fund monies are required.

MUNICIPAL CODE/POLICY DOCUMENT CROSS REFERENCE

This action does not affect the Municipal Code.

Honorable Mayor and
Members of the City Council

July 20, 2010
Page 2 of 2

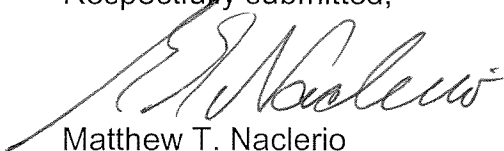
ENVIRONMENTAL REVIEW

In accordance with the California Environmental Quality Act (CEQA), this project is Categorically Exempt under CEQA Guidelines, Section 15303, New Construction or Conversion of Small Structures.

RECOMMENDATION

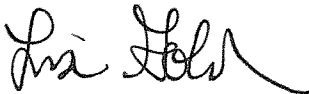
Adopt plans and specifications and authorize a call for bids for the upgrades to the northside storm drain pump station, No. P.W. 02-10-06.

Respectfully submitted,



Matthew T. Naclerio
Public Works Director

Approved as to funds and account,



Lisa Goldman
Deputy City Manager

BH:RC:gc

Exhibit

1. Plans and Specifications (on file with the City Clerk's office)

CITY OF ALAMEDA

Memorandum

To: Honorable Mayor and
Members of the City Council

From: Ann Marie Gallant
Interim City Manager

Date: July 20, 2010

Re: Adopt Plans and Specifications and Authorize a Call for Bids for the
Repair of Portland Cement Concrete Sidewalk, Curb, Gutter, Driveway,
and Minor Street Patching, FY10-11, Phase 11, No. P.W. 06-10-14

BACKGROUND

The City of Alameda has approximately 260 miles of sidewalk and about 15,000 street trees within the public right-of-way. As the trees grow and mature, site conditions, such as narrow planting strips, high ground water, soil conditions, and improper irrigation, result in tree roots raising the sidewalk, curb, gutter, and pavement area. While the Alameda Municipal Code identifies the adjacent property owner as being responsible for maintaining the sidewalk, curb, gutter, and driveway approaches the City has historically repaired sidewalk damaged by street trees.

The City contracts for the permanent repair of sidewalks, curbs, gutters, and driveway approaches on an annual basis. Locations for repair are identified by resident calls and an annual inspection program. High pedestrian use areas, such as schools and shopping centers, are inspected annually. The remainder of the City is divided into five zones, with each zone being examined once every five years. As sidewalk uplifts are identified, the Public Works Department Maintenance Division typically places temporary asphalt fillets or grinds down the uplift within 30 days. Depending on funding availability, permanent replacement of the sidewalk may take up to four or five years to complete.

DISCUSSION

The proposed project will replace approximately 4,000 linear feet of sidewalk. Public Works staff will work closely with a certified arborist to exam and evaluate the trees that have caused the sidewalk uplift to determine the best course of action for the long-term viability of the trees, and to minimize future sidewalk uplift. When required, the tree roots causing the uplift will be trimmed or shaved, as recommended by the arborist.

The project specifications allow for the annual extension of the contract on a year-to-year basis, for up to four additional years, based on mutual agreement and satisfactory performance of all aspects of the contract. If extended, the contract would be for the same terms, and contract prices would be adjusted in accordance with the construction

Honorable Mayor and
Members of the City Council

July 20, 2010
Page 2 of 2

cost index reported in the Engineering News Record for the San Francisco Bay Area. A copy of the plans and specifications is on file in the City Clerk's Office.

FINANCIAL IMPACT

The project is budgeted in the Capital Improvement Program (Project No. 98202.11), with monies allocated from Measure B and the Transportation Development Act. There is no impact to the General Fund.

MUNICIPAL CODE/POLICY DOCUMENT CROSS REFERENCE

This action does not affect the Municipal Code.

ENVIRONMENTAL REVIEW

In accordance with the California Environmental Quality Act (CEQA), this project is Categorically Exempt under the CEQA Guidelines Section 15301(c), Existing Facilities.

RECOMMENDATION

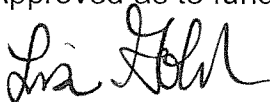
Adopt plans and specifications and authorize a call for bids for the repair of Portland Cement Concrete sidewalk, curb, gutter, driveway, and minor street patching, FY10-11, phase 11, No. P.W. 06-10-14.

Respectfully submitted,



Matthew T. Naclerio
Public Works Director

Approved as to funds and account,



Lisa Goldman
Deputy City Manager

Exhibit

1. Plans and Specifications (on file with the City Clerk's office)

cc: Watchdog Committee

CITY OF ALAMEDA

Memorandum

To: Honorable Mayor and
Members of the City Council

From: Ann Marie Gallant
Interim City Manager

Date: July 20, 2010

Re: Authorize a Request for Proposal to Provide Turnkey Design-Build
Services for Photovoltaic (Solar) Generation System, No. P.W. 05-10-12

BACKGROUND

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act (ARRA) into law. The measure included funding for the Energy Efficiency and Conservation Block Grant (EECBG) Program. The City received \$640,600 from the EECBG program, and the City Council designated \$414,000 toward the installation of a photovoltaic (solar) generation system for the Main Library.

DISCUSSION

Due to the complexity of designing and installing a solar generation system, Public Works staff proposes to initiate a Request for Proposal (RFP) for a design-build contract. Solar panel installation is site-specific, and designs are based on manufacturer-specific products. The RFP is for the planning, design, permitting, installation, connection, and start-up commissioning of a minimum 66-kilowatt photovoltaic (PV) system at the Main Library. The project is expected to provide approximately 19 percent of the building's annual electric load, and reduce greenhouse gas emissions by 67,999 pounds of carbon dioxide equivalent. The Main Library was originally designed to include a PV system, and the solar roof support infrastructure was installed; however, the panels were removed from the project to manage contract cost overages. A copy of the RFP is on file in the City Clerk's office.

FINANCIAL IMPACT

The project is budgeted in the Capital Improvement Program (Project No. 90915), with monies allocated from the EECBG in ARRA funding. In addition, the project qualifies for a solar rebate of \$156,728 from Alameda Municipal Power. There is no impact to the General Fund.

MUNICIPAL CODE/POLICY DOCUMENT CROSS REFERENCE

This action does not affect the Municipal Code. The project is consistent with the City's Local Action Plan for Climate Protection and furthers progress towards the greenhouse gas reduction target contained in the Plan.

ENVIRONMENTAL REVIEW

In accordance with the California Environmental Quality Act (CEQA), this project is Categorical Exempt under the CEQA Guidelines Section 15301(c), Existing Facilities.

RECOMMENDATION

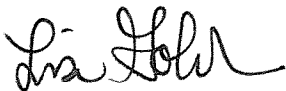
Authorize a request for proposal to provide turnkey design-build services for photovoltaic (solar) generation system, No. P.W. 05-10-12.

Respectfully submitted,



Matthew T. Naclerio
Public Works Director

Approved as to funds and account,



Lisa Goldman
Deputy City Manager

BH:FB:gc

Exhibit

1. RFP (on file with the City Clerk's office)

CITY OF ALAMEDA

Memorandum

To: Honorable Mayor and
Members of the City Council

From: Ann Marie Gallant
Interim City Manager

Date: July 20, 2010

Re: Adopt a Resolution Authorizing the Interim City Manager to Apply for
Regional Measure 2 Bridge Toll Funds for the Operating Subsidy and
Capital Projects for the City of Alameda Ferry Services, and Adopt a
Resolution Stating the City's Intent to Transfer the City's Ferry Services to
the Water Emergency Transportation Authority

BACKGROUND

On June 15, 2010, the City Council adopted Resolution No. 14460 authorizing the Interim City Manager to apply for Regional Measure 1 (RM1) and Regional Measure 2 (RM2) grants, and approving the FY10-11 operating budgets for the Alameda Ferry Services. The Metropolitan Transportation Commission (MTC) has since determined that applications for RM2 ferry operating and capital grant funds require adoption of two resolutions: a resolution requesting RM2 funds and a resolution stating the City's intent to transfer the ferry services to the Water Emergency Transportation Authority (WETA).

DISCUSSION

When RM2 was approved in 2004, it was initially intended to provide local bridge toll revenue for the expansion of public transit service. Senate Bill (SB) 1093 expanded the use of RM2 to include temporarily funding the operation expenses of existing ferry services being transitioned to WETA. As part of the ongoing negotiations for the ferry services transfer, City and WETA staff developed the FY10-11 ferry operating and capital budgets that incorporated \$439,410 in RM2 funds for the Alameda Ferry Services. The RM2 resolution required by MTC is a standard resolution for all RM2 grant applicants and does not change the FY10-11 ferry budgets approved by City Council on June 15, 2010. The second resolution expressing the City's intent to transfer the ferry services to WETA addresses the transitioning requirements of SB 1093. The resolution states the City Council will approve a comprehensive ferry transfer agreement by October 5, 2010 and sets January 1, 2011 as the expected effective date of the transfer.

.....
City Council
Report Re:
Agenda Item #4-H
07-20-10

FINANCIAL IMPACT

The City ferry services are budgeted in the Capital Improvement Program (Project Nos. 621.20 and 621.10), with monies allocated through RM1, RM2 (for the WETA-owned vessels and ferry operating subsidy), Measure B, farebox revenue, and a contribution from the Port of Oakland. The RM2 grant request is for \$439,410. There is no impact to the General Fund associated with operations of the Alameda ferries.

MUNICIPAL CODE/POLICY DOCUMENT CROSS REFERENCE

The City's Ferry Services are consistent with the General Plan Transportation Element Guiding Policy 4.3.f. and the Transportation and Land Use Initiative of the Local Action Plan for Climate Protection.

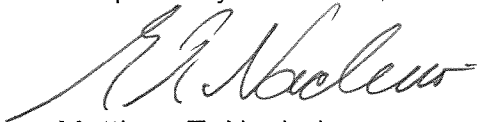
ENVIRONMENTAL COMPLIANCE

In accordance with the California Environmental Quality Act (CEQA), the capital improvement projects are Categorically Exempt under the CEQA Guidelines Section 15301(c), Existing Facilities.

RECOMMENDATION

Adopt a resolution authorizing the Interim City Manager to apply for RM2 bridge toll funds for the operating subsidy and capital projects for the City of Alameda ferry services, and adopt a resolution stating the City's intent to transfer the City's ferry services to WETA.

Respectfully submitted,



Matthew T. Naclerio
Public Works Director

Approved as to funds and account,



Lisa Goldman
Deputy City Manager

cc: Watchdog Committee (Ferry)

CITY OF ALAMEDA RESOLUTION NO. _____

AUTHORIZING THE INTERIM CITY MANAGER TO APPLY
FOR REGIONAL MEASURE 2 BRIDGE TOLL FUNDS FOR
THE OPERATING SUBSIDY AND CAPITAL PROJECTS
FOR THE CITY OF ALAMEDA FERRY SERVICES

Approved as to Form


City Attorney

WHEREAS, SB 916 (Chapter 715, Statutes 2004), commonly referred as Regional Measure 2 (RM2), identified projects eligible to receive funding under the Regional Traffic Relief Plan; and

WHEREAS, the Metropolitan Transportation Commission (MTC) is responsible for funding projects eligible for RM2 funds, pursuant to Streets and Highways Code Section 30914(c) and (d); and

WHEREAS, MTC has established a process whereby eligible transportation project sponsors may submit allocation requests for RM2 funding; and

WHEREAS, allocations to MTC must be submitted consistent with procedures and conditions as outlined in RM2 Policy and Procedures; and

WHEREAS, the City of Alameda, with the concurrence of San Francisco Bay Area Water Emergency Transportation Authority (WETA), is an eligible sponsor of transportation projects in RM2, Regional Traffic Relief Plan funds; and

WHEREAS, the Alameda/Oakland Ferry Service (AOFS) and the Alameda Harbor Bay Ferry (AHBF) services are eligible for consideration in the Regional Traffic Relief Plan of RM2, as identified in California Streets and Highways Code Section 30914(c) and (d); and

NOW, THEREFORE, BE IT RESOLVED that the City of Alameda and its agents shall comply with the provisions of the MTC's RM2 Policy Guidance (MTC Resolution No. 3636).

BE IT FURTHER RESOLVED that the City of Alameda, with WETA concurrence, is authorized to submit an application for RM2 funds for AOFS and AHBF services in accordance with California Streets and Highways Code 30914(d).

BE IT FURTHER RESOLVED that the City of Alameda certifies that the projects and purposes for which RM2 funds are being requested are in compliance with the requirements of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), State Environmental Impact Report Guidelines (14 California Code of Regulations Section 150000 et seq.) and, if

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7-20-10

relevant the National Environmental Policy Act, 42 USC Section 4-1 et seq. and the applicable regulations thereunder.

BE IT FURTHER RESOLVED that there is no legal impediment to the City of Alameda making allocation requests for RM2 funds.

BE IT FURTHER RESOLVED that there is no pending or threatened litigation which might in any way adversely affect the proposed project, or the ability of the City of Alameda to deliver such project.

BE IT FURTHER RESOLVED that the City of Alameda agrees to comply with the requirements of MTC's Transit Coordination Implementation Plan as set forth in MTC Resolution 3866.

BE IT FUTTHER RESOLVED that the City of Alameda indemnifies and holds harmless MTC, its Commissioners, representatives, agents, and employees from and against all claims, injury, suits, demands, liability, losses, damages, and expenses, whether direct or indirect (including any and all costs and expenses in connection therewith), incurred by reason of any act or failure to act of the City of Alameda, its officers, employees or agents, or subcontractors or any of them in connection with its performance of services under this allocation of RM2 funds. In addition to any other remedy authorized by law, so much of the funding due under this allocation of RM2 funds as shall reasonably be considered necessary by MTC may be retained until disposition has been made of any claim for damages.

BE IT FURTHER RESOLVED that the City of Alameda shall, if any revenues or profits from any non-governmental use of property (or project) that those revenues or profits shall be used exclusively for the public transportation services for which the project was initially approved, either for capital improvements or maintenance and operational costs, otherwise the MTC is entitled to a proportionate share equal to MTC's percentage participation in the projects(s); and be it further

BE IT FURTHER RESOLVED that the City of Alameda authorizes its Interim City Manager or her designee to execute and submit an allocation request with MTC for FY10-11 RM2 funds in the amount of \$440,000 for the project, purposes, and amounts included in the project application attached to this resolution.

BE IT FURTHER RESOLVED that a certified copy of this resolution shall be transmitted to MTC by the City Clerk in conjunction with the filing of the City of Alameda's application referenced herein.

* * * * *

I, the undersigned, hereby certify that the foregoing Resolution was duly and regularly adopted and passed by the Council of the City of Alameda in regular meeting assembled on the 20th day of July, 2010, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 21st day of July, 2010.

Lara Weisiger, City Clerk
City of Alameda

Approved as to Form

Wesley H. Hight
City Attorney

CITY OF ALAMEDA RESOLUTION NO. _____

RESOLUTION OF INTENTION TO TRANSFER THE
ALAMEDA/OAKLAND AND HARBOR BAY FERRY SERVICES TO THE
SAN FRANCISCO BAY AREA WATER EMERGENCY
TRANSPORTATION AUTHORITY

WHEREAS, Senate Bill 976 (Stats, 2007, Ch. 734) ("SB 976") laid the groundwork for transitioning local ferry operating systems from the City of Alameda ("City") and the City of Vallejo ("Vallejo") to the San Francisco Bay Area Water Emergency Transportation Authority ("WETA"); and

WHEREAS, SB 976 amended Section 30914 of the Streets and Highways Code to specify that funds made available from the 1988 voter-approved toll increase for rapid transit systems, which have historically been allocated to the City to support the Alameda/Oakland Ferry Service (AOFS) and the Alameda Harbor Bay Ferry (AHBF) and to Vallejo to support the Baylink ferry service, shall be allocated to WETA to support planning, construction, operation, and acquisition of rapid water transit systems; and

WHEREAS, SB 976 further amended Section 30914 of the Streets and Highways Code to consolidate all ferry transit operating funds made available under this section, including funds available to support the AOFS and AHBF services, to be allocated to WETA; and

WHEREAS, the Metropolitan Transportation Commission ("Commission") is the governmental agency vested with the authority to allocate funds provided under Section 30914 of the Streets and Highways Code to eligible local entities; and

WHEREAS, WETA, pursuant to Government Code Section 66540.32(b), with input and concurrence from the City and Vallejo, has developed and adopted a transition plan for transferring these cities' ferry services to WETA; and

WHEREAS, Senate Bill 1093 (Stats. 2008, Ch. 387) ("SB 1093") amended Government Code Section 66540.11(e) to permit WETA to allocate a portion of its RM2 funds to reimburse City and Vallejo for transition-related costs subject to the limitations set forth in Government Code Section 66540.11(e); and

WHEREAS, SB 1093 amended Government Code Section 66540.11(f) to provide that WETA may use RM2 operating funds for operation of the Alameda/Oakland and Harbor Bay ferry services and facilities in accordance with paragraph (6) of subdivision (d) of Section 30914 of the Streets and

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Highways Code if consistent with the Transition Plan and approved by the Commission; and

WHEREAS, the City and WETA have entered into negotiations of a formal agreement and process for transitioning the AOFS and AHBF services from City to WETA; and

WHEREAS, allocation of RM2 funding for operating expenses and transition-related costs associated with the City's AOFS and AHBF services is required for the operation of the ferry services until the transition of the AOFS and AHBF services from City to WETA can be completed; and

WHEREAS, the City desires to confirm its intention to transition the AOFS and AHBF services to WETA and to devote resources to complete the transition of the Alameda/Oakland and Harbor Bay ferry services to WETA in accordance with the schedule of milestones set forth in this Resolution.

NOW THEREFORE, BE IT RESOLVED, that the City hereby declares its intention to take all steps reasonably required to complete transition of the AOFS and AHBF services to WETA as follows:

1. The City will transition the AOFS and AHBF services to WETA as contemplated by Senate Bill 976 and Senate Bill 1093, in accordance with the Transition Plan.
2. The City hereby directs staff to continue to work with WETA to negotiate a comprehensive Transition Agreement which will be presented to the City Council for its approval. Said Transition Agreement shall incorporate the terms and conditions in the staff report previously presented by staff to the City Council, including providing for the transfer of personal property assets to WETA, including vessels, waterside assets, and spare parts and equipment used in connection with the operation of the AOFS and AHBF services, transfer of accounts, assignment of contracts and permits, allocation of liabilities, landing and mooring rights for the continued operation of the AOFS and AHBF services, operation and maintenance of the Main Street and Harbor Bay ferry terminals' landside assets, service levels, insurance requirements, and financial consideration, and shall set forth in detail the steps required to complete the transition in accordance with such terms and conditions.

3. City hereby establishes the following Milestone Dates for completion of the steps to transition outlined in this Resolution:

<u>Milestone</u>	<u>Milestone Date</u>
Comprehensive Transition Agreement Approval:	October 5, 2010

Transition: January 1, 2011 or as soon as reasonably practicable following satisfaction of conditions in Transition Agreement

4. The City hereby directs staff to devote such staff time and resources to the transition effort as are reasonably necessary to complete the transition in accordance with the Milestone Dates set forth in this Resolution. Staff shall be authorized to retain special counsel and consultants as may reasonably be necessary to achieve the above-stated Milestone Dates for the transition, subject to the budget limitations to be set forth by the Commission and WETA for ferry services transition expenses.
5. The City hereby directs staff to work with WETA to complete application for RM2 funding for operation of the AOFS and AHBF services in FY10-11, with a disbursement schedule for such funds that is consistent with the achievement of the transition Milestones set forth in this Resolution.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to forward a certified copy of this resolution to the Commission.

* * * * *

I, the undersigned, hereby certify that the foregoing Resolution was duly and regularly adopted and passed by the Council of the City of Alameda in regular meeting assembled on the 20th day of July, 2010, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 21st day of July, 2010.

Lara Weisiger, City Clerk
City of Alameda

CITY OF ALAMEDA

Memorandum

To: Honorable Mayor and
Members of the City Council

From: Ann Marie Gallant
Interim City Manager

Date: July 20, 2010

Re: Adopt a Resolution Authorizing the Public Works Director to Submit Grant Applications to the California Department of Resources and Recovery, Formerly the Integrated Waste Management Board, for all Available Grants Under the California Oil Recycling Enhancement Act for the Period of July 1, 2010 through June 30, 2015

BACKGROUND

The California Oil Recycling Enhancement Act mandates that the Department of Resources Recycling and Recovery (CalRecycle), formerly the Integrated Waste Management (IWM) Board, provide annual block grants to local governments to establish local collection programs that encourage recycling of used oil and oil filters. Block grants are non-competitive. Local governments need to submit a completed application with a City Council resolution to receive funds. To improve efficiencies and reduce paper use, CalRecycle allows grantees to submit a resolution authorizing the submission of applications for multiple years. In the past, the City has taken advantage of the multi-year feature, and staff proposes to continue this practice.

The City of Alameda meets the eligibility requirements for the Used Oil Payment Program for FY10-11. The application and resolution must be submitted by July 31, 2010. The state has not yet released the exact dollar amount available to the City, but approximately \$11,000 is anticipated to be disbursed under this grant cycle. A new resolution is required at this time, due to the name change of the state regulatory agency.

DISCUSSION

In California, a surcharge is placed on all motor oil purchases and is used to fund block grant programs to ensure waste motor oil and used motor oil filters are properly managed. The major goals of the block grants are to:

- Provide the public with convenient collection locations for used motor oil and filters
- Increase the demand for recycled oil products
- Develop methods to educate and motivate the public to recycle their used oil

**City Council
Report Re:
Agenda Item #4-I
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The Used Oil Payment Program funds will enable the City to continue its broad-based used motor oil and filter management education program. It includes an advertising program that provides residents with information regarding used motor oil and filter collection locations, the City's curbside collection program, and the need to properly manage waste oil and filters to keep petroleum contaminants out of soil and surface waters. In addition, Public Works staff provides an outreach program to educate marina operators and boat owners on proper waste oil and filter management practices. Staff also visits the local CalRecycle Certified Used Oil Collection Facilities bi-annually to ensure the program guidelines are being followed and determine if they require additional assistance.

Staff proposes that up to 20% of the funds may be allocated to the Alameda County Waste Management Authority to implement a regional campaign, if other Alameda County jurisdictions agree to similar funding. These funds would continue a regional outreach to further the goals of recycling used motor oil and used motor oil filters.

BUDGET CONSIDERATION/FINANCIAL IMPACT

The Used Oil Payment Program funds do not require matching funds. There is no impact to the General Fund.

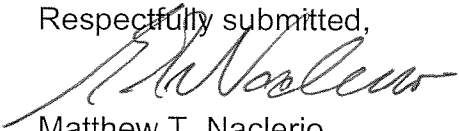
MUNICIPAL CODE/POLICY DOCUMENT CROSS REFERENCE

The proposed Resolution is consistent with the Local Action Plan for Climate Protection Zero Waste Strategy.

RECOMMENDATION

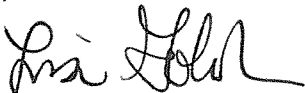
Adopt a resolution authorizing the Public Works Director to submit grant applications to CalRecycle, formerly the IWM Board, for all available grants under the California Oil Recycling Enhancement Act for the period of July 1, 2010 through June 30, 2015.

Respectfully submitted,



Matthew T. Naclerio
Public Works Director

Approved as to funds and account,



Lisa Goldman
Deputy City Manager

CITY OF ALAMEDA RESOLUTION NO. _____

AUTHORIZING THE PUBLIC WORKS DIRECTOR TO SUBMIT GRANT APPLICATIONS TO THE CALIFORNIA DEPARTMENT OF RESOURCES AND RECOVERY, FORMERLY THE INTEGRATED WASTE MANAGEMENT BOARD, FOR ALL AVAILABLE GRANTS UNDER THE CALIFORNIA OIL RECYCLING ENHANCEMENT ACT FOR THE PERIOD OF JULY 1, 2010, THROUGH JUNE 30, 2015

Approved as to Form


City Attorney

WHEREAS, pursuant to Public Resources Code § 48690, the Department of Resources Recycling and Recovery (CalRecycle), formerly the California Integrated Waste Management (IWM) Board, has established the Used Oil Payment Program to make payments to qualifying jurisdictions for implementation of their used oil programs; and

WHEREAS, CalRecycle is required to establish procedures governing the administration of the Used Oil Payment Program; and

WHEREAS, CalRecycle's procedures for administering the Used Oil Payment Program require, an applicant's governing body to declare by resolution certain authorizations related to the administration of the Used Oil Payment Program; and

WHEREAS, procedures established by CalRecycle require the grant application to certify by resolution the approval of said application; and

WHEREAS, the City will submit grant applications to CalRecycle for all available grants under the California Oil Recycling Enhancement Act for the period of July 1, 2010 through June 30, 2015; and

WHEREAS, the Used Oil Payment Program will not allow reimbursement to the City for central services and department overhead; and

WHEREAS, all jurisdictions in Alameda County are member agencies of the Alameda County Waste Management Authority (ACWMA), and will participate in a regional media campaign; and

WHEREAS, ACWMA is empowered to make and enter into contracts with its member agencies, in order to receive or provide services; and

WHEREAS, the City would benefit from a regional effort led by the ACWMA to educate the public about used motor oil and used motor oil filters recycling; and

WHEREAS, the City and other Alameda County jurisdictions have agreed, but not committed, to provide a percentage of Used Oil Payment Program funding to the

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ACWMA to provide regional used motor oil and used motor oil filters recycling services; and

WHEREAS, if the ACWMA and other Alameda County jurisdictions agree to implement regional used motor oil and used motor oil filters recycling projects, the City agrees to designate and transfer an amount up to 20% of its annual Used Oil Payment Program funds to the ACWMA for the used motor oil and used motor oil filters recycling regional projects.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Alameda hereby:

1. Authorizes the submittal of grant applications to CalRecycle for all available grants under the California Oil Recycling Enhancement Act for the period of July 1, 2010 through June 30, 2015.
2. Authorizes the Public Works Director, or his/her designee, to execute, in the name of the City of Alameda, all necessary applications, contracts, payment requests, reports, agreements, amendments, and documents hereto for the purposes of securing grant funds and to implement and carry out the purposes specified in the grant application.
3. Agrees that an amount up to 20% of the funds be allocated to the ACWMA to implement a regional outreach campaign to further the goals of used motor oil and used motor oil filter recycling projects provided other Alameda County jurisdictions agree to similar allocations of funding.

* * * * *

I, the undersigned, hereby certify that the foregoing Resolution was duly and regularly adopted and passed by the Council of the City of Alameda in regular meeting assembled on the 20th day of July, 2010, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 21st day of July, 2010.

Lara Weisiger, City Clerk
City of Alameda

CITY OF ALAMEDA

Memorandum

To: Honorable Mayor and
Members of the City Council

From: Teresa Highsmith
City Attorney

Date: July 20, 2010

Re: Amend Conflict of Interest Code by Amending Resolution No. 9460 to
Reflect Current Positions and Entities to be Included in the City of
Alameda's Conflict of Interest Code and Rescinding Resolution No.
14400

BACKGROUND

The City of Alameda is required to adopt a Conflict of Interest Code and to make amendments when new positions are added or duties changed. The last amendments to the Conflict of Interest Code were adopted November 17, 2009, Resolution No. 14400. In addition, every local government agency which has a Conflict of Interest Code within its authority has been directed by the Fair Political Practices Commission to review its Conflict of Interest Code and to either amend the code, if necessary, or report to their respective code reviewing body (City Council) that no amendment is necessary.

DISCUSSION

The Political Reform Act requires that every city adopt a Conflict of Interest Code and amend it whenever new positions are designated or duties changed. Employees are to be included when they may be involved in the making of decisions that may have a material financial effect on any financial interest. Boards, commissions and committees are to be included when they have decision-making authority.

Each employee position has been reviewed to determine which employees are involved in the making of decisions potentially having a material effect on any financial interest. Each employee who either has been added to the Conflict of Interest Code or has a change in the reporting requirements was given a copy of the proposed Conflict of Interest Code. Each employee was requested to advise of any recommendations or objections. There have been no objections made by any employees to the changes.

The Fair Political Practices Commissions (FPPC) implements and interprets the Conflict of Interest provisions of the Political Reform Act. FPPC regulation C.C.R. Section 18701 provides guidance in determining whether a board or commission is solely advisory or has decision-making authority. It states:

(1) "Member" shall include, but not be limited to, salaried or unsalaried members of committees, boards or commissions with decision making authority.

(A) A committee, board or commission possesses decision making authority whenever:

- (i) It may make a final governmental decision;
- (ii) It may compel a governmental decision; or it may prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto which may not be overridden; or
- (iii) It makes substantive recommendations which are, and over an extended period of time have been, regularly approved without a significant amendment or modification by another public official or governmental agency.

Each committee, board, and commission has been reviewed. This review included the existing committees, boards, and commissions and those created since adoption of Resolution No. 12073, adopted February 20, 1991. The staff liaison to each of the committees, boards and commissions reviewed the recommendations of that entity to the City Council. The record of each entity was reviewed to determine whether the City Council regularly approved their substantive recommendations without significant amendment or modification. Based on the review, staff concluded that all of the current disclosure categories for all existing committees, boards and commissions were correct.

Addressing Section 87306.5 of the Political Reform Act, requiring the City Council to act as a reviewing body, staff is requesting that the City Council, by motion, delegate the responsibility of being the reviewing body to the City Attorney. A copy of each local agency's Conflict of Interest Code and bi-annual reports will be kept on file in the City Clerk's office.

FINANCIAL IMPACT

There is no impact on the General Fund.

Honorable Mayor and
Members of the City Council

July 20, 2010
Page 3 of 3

RECOMMENDATION

Adopt a resolution amending the Conflict of Interest Code by amending Resolution No. 9460 to reflect current positions and entities to be included in the City of Alameda's conflict of interest code and rescinding Resolution No. 14400 and request that the City Council, by motion, delegate to the City Attorney the responsibility of being the reviewing body for local government agencies' Conflict of Interest Codes.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Teresa L. Highsmith", written in a cursive style.

Teresa L. Highsmith
City Attorney

TH/cm

CITY OF ALAMEDA RESOLUTION NO. _____

AMENDING RESOLUTION NO. 9460 TO REFLECT CURRENT POSITIONS AND
ENTITIES TO BE INCLUDED IN THE CITY OF ALAMEDA'S CONFLICT OF INTEREST
CODE AND RESCINDING RESOLUTION NO. 14400

BE IT RESOLVED by the Council of the City of Alameda that City of Alameda Resolution
No. 14400 is hereby rescinded; and

BE IT FURTHER RESOLVED by the Council of the City of Alameda that Paragraph 2 of
the Conflict of Interest Code set forth in Resolution No. 9460 be amended thereof to read:

2. The terms of 2 Cal. Adm. Code Section 18730 and any amendments to it duly
adopted by the Fair Political Practices Commission along with the attached Appendices in which
officials and employees are designated and disclosure categories are set forth, are hereby
incorporated by reference and constitute the Conflict of Interest Code for the following
departments and agencies:

Alameda Municipal Power
City Attorney's Office
City Clerk's Office
City Council
City Manager's Office
Civil Service Board
Claims Board
Commission on Disability Issues
Community Development Department
Economic Development Department
Economic Development Commission
Film Commission
Finance Department
Fire Department
Golf Commission
Golf Complex
Historical Advisory Board
Housing and Building Code Hearing and Appeals Board
Housing Authority
Housing Commission
Human Resources Department
Library Board
Library Department
Pension Board
Planning Board
Police Department
Public Art Commission
Public Utilities Board
Public Works Department
Recreation and Park Commission
Recreation and Park Department
Social Service Human Relations Board
Transportation Commission

* * * * *

Resolution #4-J CC
7-20-10

Approved as to Form


City Attorney

DESIGNATED POSITIONS
AND
DISCLOSURE CATEGORIES

DESIGNATED POSITIONS

DISCLOSURE CATEGORY

Alameda Municipal Power

Buyer	A through F
Senior Energy Resource Analyst	A through F
AGM – Engineering & Operations	A through F
AGM – Administration	A through F
AGM – Customer Resources	A through F
AGM – Energy Resource Planning	A through F
General Manager – Alameda Municipal Power	A through F
Engineering Supervisor	A through F
Financial Analyst	A through F
Financial Services Supervisor	A through F
Support Services Supervisor	A through F

City Attorney's Office

City Attorney*	
Assistant City Attorney, I/II	A through F
Deputy City Attorney, I/II	A through F
Risk Manager	A through F
Administrative Management Analyst	A through F

City Clerk's Office

City Clerk	A through F
Assistant City Clerk	A through F
Administrative Services Coordinator	A through F

City Council

City Council Members*

City Manager's Office

City Manager*	
Deputy City Manager	A through F
Information Technology Manager	A through F

Civil Service Board

Board Members	A through F
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*Reporting requirements covered by other law.

Claims Board

Board Members	A through F
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Commission on Disability Issues

Board Members	A through F
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Community Development Department

Planning Services Manager	A through F
Building Official	A through F
Supervising Building Inspector	A through F
Code Compliance Officer	A through F
Permit Technician, I	A through F
Plan Check Engineer	A through F
Planner, I/II	A through F
Combination Building Inspector	A through F
Senior Combination Building Inspector	A through F

Economic Development Department

Development Services Division Manager	A through F
Economic Development Director	A through F
Development Manager	A through F
Administrative Services Coordinator	A through F
Development Coordinator	A through F

Economic Development Commission

Commission Members	A through F
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Film Commission

Commission Members	A through F
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Finance Department

Auditor	A through F
Treasurer*	
Controller	A through F
Finance Director	A through F
Supervising Accountant	A through F
Purchasing and Payables Coordinator	A through F

*Reporting requirements covered by other law.

Fire Department

Fire Chief	A through F
Deputy Fire Chief	A through F
Division Chief	A through F
E.M.S. Education Coordinator	A through F
Fire Code Compliance Officer	A through F
Administrative Management Analyst	A through F

Golf Commission

Commission Members	None
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Historical Advisory Board

Board Members	A through F
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Housing Authority

Board Members	A through F
Executive Director – Housing Authority	A through F
Finance Manager	A through F
Housing Assistance Manager	A through F
Housing Authority Manager	A through F
Public Works Supervisor	A through F
Development Services Division Manager	A through F
Community Development Program Manager	A through F

Housing and Building Code Hearing and Appeals Board

Board Members	A through F
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Housing Commission

Commission Members	A through F
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Human Resources Department

Human Resources Director	A through F
Senior Management Analyst	A through F
Administrative Management Analyst	A through F

Library Board

Board Members	A through F
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Library Department

Library Director	A through F
Supervising Librarian	A through F
Library Technician (Order Clerk)	A through F
Administrative Services Coordinator	A through F

Pension Board

Board Members	A through F
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Planning Board

Board Members	A through F
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Police Department

Chief of Police	A through F
Police Captain	A through F
Police Lieutenant	A through F
Administrative Management Analyst	A through F
Supervising Animal Control Officer	A through F

Public Art Commission

Commission Members	A through F
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Public Utilities Board

Board Members	A through F
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Public Works

Public Works Director	A through F
City Engineer	A through F
Public Works Coordinator	A through F
Public Works Superintendent	A through F
Public Works Supervisor	A through F
Senior Civil Engineer	A through F
Supervising Civil Engineer	A through F
Associate Civil Engineer	A through F
Transportation Engineer	A through F
Survey & Construction Inspector Supervisor	A through F
Senior Construction Inspector	A through F
Construction Inspector	A through F
Administrative Management Analyst	A through F
Administrative Services Coordinator	A through F
Transportation Coordinator	A through F

Recreation and Park Commission

Commission Members

A through F

Recreation and Parks Department

Recreation and Parks Director

A through F

Recreation Manager

A through F

Recreation Supervisor

A through F

Park Manager

A through F

Social Service Human Relations Board

Board Members

A through F

Transportation Commission

Commission Members

A through F

Consultants*

- * Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitation:

The City Manager may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements in this section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The City Manager determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

DISCLOSURE CATEGORIES

An investment, interest in real property, or income is reportable if the business entity in which the investment is held, the interest in real property, or the income or source of income may foreseeably be affected materially by any decision made or participated in by the designated employee by virtue of the employee's position.

An investment, interest in real property, or source of income or gift does not have a foreseeable material effect on an economic interest of the designated employee unless the business, real property or source of income or gift may foreseeably require legislative action or permits from the City of Alameda or may foreseeably enter into contracts or leases with or make sales of real property or goods or services to or be sold to the City of Alameda, a department thereof or the Housing Authority of the City of Alameda.

In general, that which a reasonable person would predict, anticipate, or expect beforehand, can be said to be "foreseeable". The term requires the application of reasonable judgment to assess the degree of likelihood that a decision made or participated in will as financial interest. Where the likelihood is sufficiently great that a reasonable person would predict or anticipate an effect on a financial interest, the effect of the decision is foreseeable. Clearly, in the context of designating positions within a Conflict of Interest Code, "foreseeable" means greater probability than "conceivable", yet less probability than "certainly".

CATEGORY A - INVESTMENTS

All direct or indirect investments of the designated employee valued over \$2,000 in a business entity, including any parent, subsidiary or related business, either (1) located in Alameda or (2) doing business in Alameda.

CATEGORY B - INTERESTS IN REAL PROPERTY

All direct or indirect interests over \$2,000 of the designated employee in real property located in Alameda.

CATEGORY C - INCOME (OTHER THAN GIFTS AND LOANS)

All direct or indirect income of the designated employee aggregating \$500 or more from any one source, during the reporting period.

CATEGORY D - LOANS

Outstanding loans and loans received by the designated employee from one source, aggregating \$500.00 or more during the reporting period.

CATEGORY E - GIFTS

Gifts to the designated employee from one source, which total \$50 or more during the reporting period.

CATEGORY F - TRAVEL PAYMENTS, ADVANCES AND REIMBURSEMENTS

Travel payments to the designated employee from one source, which total \$320 or more during the reporting period. Reportable travel payments include advances and reimbursements for travel and related lodging and subsistence.

INCOMPATIBLE ACTIVITIES

(A) No officer or employee shall engage in any employment, activity, or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to his/her duties as an officer or employee or with the duties, functions or responsibilities of his/her appointing power or the agency. No officer or employee shall perform any work, service or counsel for compensation outside of his/her employment where any part of his/her efforts will be subject to approval by any other officer, employee, board of commission of his/her employing body.

(B) An employee or officer's outside employment, activity or enterprise is prohibited if that:

(1) Involves the use for private gain or advantage of his/her departmental time, facilities, equipment and supplies; the badge, uniform, prestige or influence of the departmental office or employment;

(2) Involves receipt or acceptance by the officer or employee of any money or other consideration from anyone other than the City for the performance of an act which the officer or employee, if not performing such act, would be required or expected to render in the regular course or hours of his/her employment as a part of his/her duties as a local agency officer or employee;

(3) Involves the performance of an act in other than his/her capacity as an officer or employee which act may later be subject directly or indirectly to the control, inspection, review, audit or enforcement of any other officer or employee of the department by which he/she is employed;

(4) Involves such time demands as would render performance of his her duties as an officer or employee less efficient.

This Appendix C shall apply to all employees, officers and agents within the agencies covered by the Code.

(This Appendix does not incorporate by reference the definitions of the Political Reform Act and the regulations adopted pursuant thereto. Interpretations of Government Code Section 1126 are applicable and interpretations of the Political Reform Act may apply.)

CITY OF ALAMEDA ORDINANCE NO. _____
New Series

REVISING THE CITY'S SEWER SERVICE CHARGES

WHEREAS, Section 18-4.3 of the Alameda Municipal Code (AMC) and Section 5471 of the California Health & Safety Code permit the City Council of the City of Alameda to set the City's sewer service charges; and

WHEREAS, on July 6, 2010, the City Council held a full and fair public hearing, properly noticed as required by law, at which all persons interested were given an opportunity to provide oral and written testimony with respect to a proposed revision of the City's sewer service charges; and

WHEREAS, the City Council desires to revise the City's sewer service charges.

The City Council of the City of Alameda does ordain as follows:

Section 1. The City Council hereby establishes the schedule set forth in Exhibit A to this Ordinance, which is incorporated herein by reference, as the City's schedule of sewer service charges.

Section 2. The City Council hereby finds and determines that:

- A. The City has complied with each of the requirements of Section 6 of Article XIID of the California Constitution with respect to the actions taken by this Ordinance.
- B. The rates established by this Ordinance do not exceed the amounts permissible under Article XIID for a fee for sewer service, and the sewer service charge is not a tax.
- C. A majority protest, as defined by Section 6(b) of Article XIID of the California Constitution does not exist with respect to the increase of the sewer service charge.

Section 3. The City Council continues its election to collect the sewer service charge on the tax roll in the same manner, by the same persons, and at the same time as, together with and not separately from, its general taxes pursuant to Section 5473 *et seq.* of the California Health & Safety Code and Section 18-4.4 of the AMC. Staff is directed to take all actions necessary to cause such collection to occur and to request such assistance as is necessary from the County of Alameda.

Section 4. Notwithstanding any provision of the AMC to the contrary, all charge proceeds shall be deposited in the sewer service charge fund and shall

be used only for the construction, reconstruction, repair, maintenance, and operation of sewer facilities and appurtenances thereto, to pay for engineering, mapping, describing, analyzing, and planning regarding the City's sewer facilities and appurtenances thereto; to repay principal and interest on bonds issued for such purposes and to reimburse the City's General Fund for any payment made therefrom, during the same fiscal year; and for any of the purposes for which sewer service charge fund money could be expended. No charge proceeds shall be used for any other purpose.

Section 5. For purposes of Section 18-4.3 of the AMC, this ordinance shall serve the purpose of the resolution described in paragraphs a, b, and c of that section.

Section 6. The City Council hereby declares that it would have passed this Ordinance word by word, sentence by sentence, paragraph by paragraph, and section by section, and does hereby declare that any provisions of this Ordinance are severable and, if for any reason any word, sentence, paragraph or section of this Ordinance shall be held invalid, such decision shall not affect the validity of the remaining parts of this Ordinance.

Section 7. This Ordinance shall be in full force and effect from and after the expiration of thirty (30) days from the date of its final passage.

Presiding Officer of the Council

Attest:

Lara Weisiger, City Clerk
City of Alameda

* * * * *

I, the undersigned, hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by Council of the City of Alameda in regular meeting assembled on the _____ day of _____, 2010, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this _____ day of _____, 2010.

Lara Weisiger, City Clerk
City of Alameda

CITY OF ALAMEDA

Memorandum

To: Honorable Mayor and
Members of the City Council

From: Ann Marie Gallant
Interim City Manager

Date: July 20, 2010

Re: Approve Proceedings to Refinance Installment Payment Obligations of Alameda Municipal Power, Approve Issuance of Revenue Bonds by Alameda Public Financing Authority for Such Purposes, and Approve Related Documents and Actions

BACKGROUND

At its January 19, 2000 meeting, the City Council and the Alameda Public Improvement Corporation approved the sale and delivery of Certificates of Participation (COPs) to provide for the expansion and improvement of the electric system, refinancing of outstanding installment sale obligations, and to provide for the partial defeasance of certain obligations of Alameda Municipal Power (AMP) related to the Northern California Power Agency. The fixed-interest Series 2000A COPs were issued for \$9,545,000 and the variable-interest auction-rate Series 2000AT COPs were issued for \$29,500,000. On June 28, 2001, the Public Utilities Board authorized the execution of an International Swap Dealers Association (ISDA) Master Agreement for an Interest-Rate Swap for the auction-rate Series 2000AT COPs in order to convert variable interest-rate to a fixed interest-rate. The Interest-Rate Swap agreement expired on July 1, 2010.

AMP has determined that it is in its best interest to refinance outstanding installment payment obligations from the Series 2000A and the Series 2000AT COPs. To accomplish the refinancing, it is proposed that the Alameda Public Financing Authority ("Authority"), authorize the issuance of its revenue bonds ("Bonds"), all pursuant to and secured by an Indenture of Trust ("Indenture") by and between the Authority and U.S. Bank National Association (the "Trustee"). The Authority will acquire the electric system from AMP pursuant to an Acquisition Agreement ("Acquisition Agreement"). In order to provide for repayment of the Bonds, the Authority will sell the electric system back to AMP pursuant to an Installment Sale Agreement ("Installment Sale Agreement"), under which AMP will agree to make installment payments to the Authority payable from net revenues of the electric system.

The Authority's revenue bonds will be designated as the Alameda Public Financing Authority Revenue Bonds, Series 2010A (Alameda Municipal Power Refinancing) and the Alameda Public Financing Authority Taxable Revenue Bonds, Series 2010B (Alameda Municipal Power Refinancing). Proceeds of the Bonds will be used to prepay

and discharge the installment obligations of AMP pursuant to two escrow deposit and trust agreements between AMP and U.S. Bank, as escrow bank. An official statement ("Official Statement"-Exhibit 4) to be used in connection with the marketing of the Bonds has been prepared. A Bond purchase contract ("Purchase Contract" – Exhibit 7), pursuant to which JP Morgan Securities, Inc. (the "Underwriter") will agree to purchase the Bonds for reoffering to the public, has been prepared.

DISCUSSION

AMP hired McDonald Partners as its Financial Advisor (FA) for financial planning, and to review AMP's Series 2000A and 2000AT COPs. The FA conducted a comprehensive review of AMP's financial planning goals, the COPs, and bond coverage requirements. Additionally, staff developed a series of assumptions and scenarios with the FA to generate a Ten Year Financial Plan used to balance revenue with expenses while maintaining adequate reserves.

At the February 22, 2010 Public Utilities Board (Board) meeting, the FA provided a market update, a debt refunding analysis, an alternative structuring of reserves, and the credit implications of implementing the debt/reserve alternatives. At that time, the recommendation was to pursue a combined refunding of the COPs at the beginning of the new fiscal year. The FA presented assumptions and calculations indicating that refinancing the Series 2000A COPs would result in approximately \$600,000 gross savings, refinancing the Series 2000AT COPs would also result in approximately \$600,000 gross savings, and a combined issuance amount might yield higher savings. The discussion during the presentation also highlighted that these savings could offset fees and charges associated with the refinancing. During March and April 2010, staff highlighted existing policy directives and strategies related to ratemaking.

At the May 17, 2010 Board meeting, the Board established financial guidelines to ensure that finances are managed in a manner that will continue to provide for the delivery of reliable electric service as the community grows, manage the organization so that it lives within its means, and to establish reserves necessary to meet unanticipated expenditures and service level emergencies. Also at the May 17, 2010 Board meeting, the General Manager was authorized to hire a financial team to refinance the 2000A and 2000AT COPs.

In addition to the advantages to AMP provided by restructuring the financing documents, the refinancing will accomplish certain goals established in the comprehensive financing plan, including refinancing existing taxable auction-rate securities (the 2000AT COPs) to mitigate interest-rate exposure, buying down taxable debt with excess reserves, and funding debt service reserve accounts with cash in lieu of a MBIA surety policy.

By early June, the financial team had organized the refinancing plan and produced draft financing documents including the Indenture of Trust, the Installment Sale Agreement and the Official Statement. Under the new issuance, the Series 2010A Bonds will

refinance the existing Series 2000A COPs, and the Series 2010B Bonds will refinance the existing Series 2000AT COPs. The complete refinancing of the existing Series 2000A/AT COPs will provide for the addition of a Rate Stabilization Fund, a combined Debt Service Reserve Fund that may secure all parity debt and interest earnings being permitted in the rate covenant. Also, the ability to utilize tax advantage structures (such as Build-America-Bonds) in future supplements has been included.

The Installment Sale Agreement (Exhibit 6) includes customary covenants including a rate covenant, additional bonds test, debt service reserve fund, "no sale" of the System, and payments that are unconditional obligations of AMP. Additionally, defined capitalized terms used in document definitions have been reviewed, and the Electric System Revenues term has been expanded to include all rates, fees and charges; all interest earnings; and where relevant, transfers from the Rate Stabilization Fund; and any additional adjustments made for a budgeted transfer from any other fund.

The schedule for issuance of the 2010 Bonds is:

Complete approvals and authorizations	July 20, 2010
Price bonds	August 3, 2010
Closing date	August 12, 2010

FINANCIAL IMPACT

The primary purpose of refinancing the existing Series 2000A/AT COPs is to mitigate variable interest-rate exposure, buy down taxable debt with excess reserves, and fund debt service reserve accounts with cash in lieu of a MBIA surety policy.

As of July 7, 2010, the refinancing of the Series 2000A would result in approximately \$1,500,000 gross savings and nearly \$600,000 in net present value savings. While the refinancing of the Series 2000AT is primarily to mitigate interest-rate exposure, it is estimated that the refinancing would result in approximately \$1,200,000 of present value savings if short-term taxable interest rates were to rise to the average rate on such securities for the last 20 years, over the next five years. While there can be no assurance that an increase in short-term rates will happen exactly as modeled, or that such savings will materialize, the financing team believes it is an opportune time to mitigate interest-rate risk for the remaining term of the bonds.

The Series 2010A Bonds are being issued in the approximate amount of \$8,800,000 and the Series 2010B Bonds are being issued in the approximate amount of \$23,400,000. AMP will provide approximately \$10,900,000 to assist in the refinancing of the COPs with funds consisting of approximately (i) \$1,900,000 from the Series 2000A COPs Installment Payment Fund and (ii) \$9,000,000 from reserves. The Sources and Uses of Funds (Exhibit 7), provides a summary of the transaction.

In addition to the refinancing of existing obligations, the following transaction fees are included in the 2010 Bond amounts:

Bond Counsel	\$ 85,000
Underwriter	\$225,000
Underwriter's Counsel	\$ 55,000

The funds for payment of debt service on the bonds, is included in Alameda Municipal Power's FY10-11 budget approved by the Board on June 28, 2010.

RECOMMENDATION

Approve proceedings to refinance installment payment obligations of Alameda Municipal Power, approve issuance of revenue bonds by the Alameda Public Financing Authority for such purposes, and approve related documents and actions.

Respectfully submitted,



Girish Balachandran
General Manager

RO:ra

Exhibits:

1. Acquisition Agreement
2. Sources and Uses of Funds
3. Escrow Agreements – Series 2000A and Series 2000AT
4. Official Statement for the 2010 Bonds – on file in the City Clerk's Office
5. Indenture of Trust – on file in the City Clerk's Office
6. Installment Sale Agreement – on file in the City Clerk's Office
7. Bond Purchase Contract – on file in the City Clerk's Office

cc: Public Utilities Board

ACQUISITION AGREEMENT

dated as of August 1, 2010

by and between

ALAMEDA MUNICIPAL POWER, as Seller

and the

ALAMEDA PUBLIC FINANCING AUTHORITY, as Purchaser

(Alameda Municipal Power Refinancing)

APFA
Exhibit 1 to
Agenda Item #3-A
07-20-10

City Council
Exhibit 1 to
Agenda Item #6-A
07-20-10

ACQUISITION AGREEMENT

THIS ACQUISITION AGREEMENT, dated as of August 1, 2010, is by and between ALAMEDA MUNICIPAL POWER, being the City of Alameda, California, acting by and through its Bureau of Electricity ("Alameda Municipal Power"), as seller, and the ALAMEDA PUBLIC FINANCING AUTHORITY, a joint powers authority duly organized and existing under and by virtue of the laws of the State of California (the "Authority"), as purchaser.

RECITALS:

WHEREAS, Alameda Municipal Power presently owns an electric system, as more particularly described in the definition "Electric System" in Section 1.01 of the Indenture of Trust, dated as of August 1, 2010 (the "Indenture"), between the Authority and U.S. Bank National Association, as trustee (the "Trustee"), which electric system is hereafter referred to as the "Electric System"; and

WHEREAS, the Authority wishes to acquire the Electric System from Alameda Municipal Power for the purpose of providing moneys to pay in full certain outstanding obligations of Alameda Municipal Power; and

WHEREAS, the Authority proposes to sell the Electric System back to Alameda Municipal Power pursuant to an Installment Sale Agreement, dated as of August 1, 2010, by and among the Authority, the Trustee and Alameda Municipal Power (the "Installment Sale Agreement"), and to assign its right to receive installment payments (the "Installment Payments") under the Installment Sale Agreement to the Trustee pursuant to the Indenture; and

WHEREAS, pursuant to the Indenture, the Authority will issue \$_____ aggregate principal amount of its Revenue Bonds, Series 2010A (Alameda Municipal Power Refinancing) and Taxable Revenue Bonds, Series 2010B (Alameda Municipal Power Refinancing) (collectively, the "Bonds") to provide moneys to Alameda Municipal Power to allow it to repay such obligations.

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, as follows:

Section 1. Acquisition of the Electric System. Alameda Municipal Power hereby grants, conveys and sells to the Authority all right, title and interest of Alameda Municipal Power in and to the Electric System and the Authority hereby acquires all of the right, title and interest of Alameda Municipal Power in the Electric System.

Section 2. Acquisition Price. In consideration of the acquisition by the Authority of Alameda Municipal Power's right, title and interest in the Electric System pursuant to Section 1, the Authority hereby agrees to pay to Alameda Municipal Power the amount of \$1.00. Said purchase price shall be paid by the Authority to Alameda Municipal Power on the date of execution and delivery of this Acquisition Agreement.

Section 3. Amendment. This Acquisition Agreement may be amended by the parties hereto at any time during the Term of the Agreement (as such term is defined in the Installment Sale Agreement).

Section 4. Section Headings. All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Acquisition Agreement.

Section 5. Execution. This Acquisition Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, Alameda Municipal Power and the Authority have caused this Acquisition Agreement to be executed by their respective officers thereunto duly authorized, all as of the day and year first written above.

ALAMEDA MUNICIPAL POWER

By: _____
General Manager

ATTEST:

By: _____
Secretary

ALAMEDA PUBLIC FINANCING
AUTHORITY

By: _____
Executive Director

ATTEST:

By: _____
Secretary

SOURCES AND USES OF FUNDS

Alameda Municipal Power
tax-exempt and taxable refunding
Uniform Aggregate Savings
Accelerated Taxable Bonds

Dated Date 8/11/2010
Delivery
Date 8/11/2010

Sources:		2010 Taxable Refunding	2010 Tax Exempt Refund	Total
Bond Proceeds:				
	Par Amount	23,105,000.00	8,575,000.00	31,680,000.00
	Premium		60,649.35	60,649.35
		23,105,000.00	8,635,649.35	31,740,649.35
Other Sources of Funds:				
	Cash On Hand	6,785,186.01	1,214,813.99	8,000,000.00
	Cash on Hand for DSRF	1,907,753.59	708,028.01	2,615,781.60
		8,692,939.60	1,922,842.00	10,615,781.60
		31,797,939.60	10,558,491.35	42,356,430.95

Uses:		2010 Taxable Refunding	2010 Tax Exempt Refund	Total
Refunding Escrow Deposits:				
	Cash Deposit	29,500,000.00	9,699,238.33	39,199,238.33
Other Fund Deposits:				
	Debt Service Reserve Fund	1,907,753.59	708,028.01	2,615,781.60
Delivery Date Expenses:				
	Cost of Issuance	218,797.35	81,202.65	300,000.00
	Underwriter's Discount	166,724.69	66,563.06	233,287.75
		385,522.04	147,765.71	533,287.75
Other Uses of Funds:				
	Additional Proceeds	4,663.97	3,459.30	8,123.27
		31,797,939.60	10,558,491.35	42,356,430.95

ESCROW DEPOSIT AND TRUST AGREEMENT

by and between

ALAMEDA MUNICIPAL POWER

and

U.S. BANK NATIONAL ASSOCIATION,
as Escrow Bank

dated as of August 1, 2010

relating to the refunding of the outstanding
Electric System Revenue
Certificates of Participation, Series 2000A
(Alameda Power & Telecom)

City Council
Exhibit 3 to
Agenda Item #6-A
07-20-10

ESCROW DEPOSIT AND TRUST AGREEMENT

This ESCROW DEPOSIT AND TRUST AGREEMENT, dated as of August 1, 2010, is by and between Alameda Municipal Power (formerly known as Alameda Power & Telecom), being the City of Alameda, California, acting by and through its Bureau of Electricity ("Alameda Municipal Power"), and U.S. Bank National Association, a national banking association duly organized and existing under the laws of the United States of America, as escrow bank and as 2000 Trustee (as defined herein)(the "Escrow Bank").

RECITALS:

WHEREAS, Alameda Municipal Power has heretofore caused the execution and delivery of Electric System Revenue Certificates of Participation, Series 2000A (the "2000A Certificates"), evidencing and representing the fractional undivided interests of the owners thereof in installment payments for certain property pursuant to an Electric Improvements Installment Sale Agreement, dated as of April 1, 2000 (the "2000 Installment Sale Agreement"), with the Alameda Public Improvement Corporation (the "Corporation"), of which \$_____ remains outstanding;

WHEREAS, the 2000A Certificates were executed and delivered pursuant to the terms of an Electric Improvements Trust Agreement, dated as April 1, 2000 (the "2000 Trust Agreement"), by and among Alameda Municipal Power, the Corporation and U.S. Bank National Association (successor by merger to U.S. Bank Trust National Association), as trustee thereunder (the "2000 Trustee");

WHEREAS, in order to provide for the repayment of the 2000A Certificates, the Corporation sold certain real property and improvements (the "2000 Property") to Alameda Municipal Power pursuant to the 2000 Installment Sale Agreement, under which Alameda Municipal Power agreed to make installment payments to the Corporation (the "2000A Installment Sale Payments") in each year to pay the full amount of principal of and interest on the 2000A Certificates;

WHEREAS, Alameda Municipal Power has determined that, as a result of favorable financial market conditions, it is in the best interests of Alameda Municipal Power at this time to refinance Alameda Municipal Power's obligation to make the 2000A Installment Sale Payments and, as a result thereof, to provide for the prepayment of all outstanding 2000A Certificates on _____, 2010, at a prepayment price of 101% of the unpaid principal component thereof, plus the interest component accrued to the prepayment date, and to that end, Alameda Municipal Power proposes to enter into a new installment sale agreement, dated as of August 1, 2010, by and among the Alameda Public Financing Authority (the "Authority"), U.S. Bank National Association, as trustee, and Alameda Municipal Power;

WHEREAS, the Corporation and Alameda Municipal Power propose to provide for the payments described above and to appoint the Escrow Bank as their agent for the purpose of applying said deposit to provide for the payment of the 2000A Installment Sale Payments in accordance with the instructions provided by this Escrow Deposit and Trust Agreement and of

applying said 2000A Installment Sale Payments to the payment of the principal of and interest on the 2000A Certificates and the Escrow Bank desires to accept said appointment;

WHEREAS, the Corporation and Alameda Municipal Power wish to provide for the payment described above and to enter into this Escrow Deposit and Trust Agreement for the purpose of providing the terms and conditions for the deposit and application of amounts so deposited;

WHEREAS, the Authority has agreed to issue its \$_____ Alameda Public Financing Authority Revenue Bonds, 2010 Series A (Alameda Municipal Power Refinancing) (the "Bonds"), pursuant to the terms of an indenture, dated as August 1, 2010 (the "Indenture"), by and between the Authority and U.S. Bank National Association, as trustee thereunder (the "Trustee"), and to apply a portion of the proceeds thereof to accomplish such refinancing; and

WHEREAS, the Escrow Bank has full powers to act with respect to the escrow and trust created herein and to perform the duties and obligations to be undertaken pursuant to this Escrow Deposit and Trust Agreement.

AGREEMENT:

NOW, THEREFORE, in consideration of the above premises and of the mutual promises and covenants herein contained and for other valuable consideration, the parties hereto do hereby agree as follows:

Section 1. Definitions. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the 2000 Trust Agreement.

Section 2. Appointment of Escrow Bank. Alameda Municipal Power hereby appoints the Escrow Bank as escrow bank for all purposes of this Escrow Deposit and Trust Agreement and in accordance with the terms and provisions of this Escrow Deposit and Trust Agreement, and the Escrow Bank hereby accepts such appointment.

Section 3. Establishment of Escrow Fund. There is hereby created by Alameda Municipal Power with, and to be held by, the Escrow Bank as security for the payment of the 2000A Certificates as hereinafter set forth, an irrevocable escrow to be maintained in trust by the Escrow Bank on behalf of Alameda Municipal Power and for the benefit of the owners of the 2000A Certificates, said escrow to be designated the "Escrow Fund." All moneys and securities (the "Escrow Securities") deposited in the Escrow Fund shall be held as a special fund for the payment of the principal and interest with respect to the 2000A Certificates in accordance with the provisions of this Escrow Deposit and Trust Agreement. If at any time the Escrow Bank shall receive actual knowledge that the moneys and Escrow Securities in the Escrow Fund will not be sufficient to make any payment required by Section 5 hereof, the Escrow Bank shall notify Alameda Municipal Power of such fact and Alameda Municipal Power shall immediately cure such deficiency with any legally available funds.

Section 4. Deposit into Escrow Fund; Investment of Amounts.

(a) Concurrently with delivery of the Bonds, Alameda Municipal Power shall cause to be transferred to the Escrow Bank for deposit into the Escrow Fund the amount of \$_____ in immediately available funds, derived as follows:

- (i) \$_____ from the proceeds of the sale of the Bonds;
- (ii) \$_____ from amounts on deposit in the _____ fund established under the 2000 Trust Agreement (the "_____ Fund"); and
- (iii) \$_____ remitted to the Escrow Bank by Alameda Municipal Power from funds it has in its reserves.

(b) The Escrow Bank shall invest all moneys deposited into the Escrow Fund pursuant to the preceding paragraph in demand deposit United States Treasury Securities—State and Local Government Series (the "Escrow Securities"). The Escrow Securities shall be deposited with and held by the Escrow Bank in the Escrow Fund solely for the uses and purposes set forth herein.

(c) The Escrow Bank shall not be liable or responsible for any loss resulting from its full compliance with the provisions of this Escrow Deposit and Trust Agreement.

Section 5. Instructions as to Application of Deposit.

(a) The total amount of Escrow Securities and uninvested moneys deposited in the Escrow Fund pursuant to Section 4 shall be applied by the Escrow Bank for the sole purpose of paying the principal and interest with respect to the 2000A Certificates as the same shall become due and payable, all at the times and in the amounts set forth in Exhibit A attached hereto and by this reference incorporated herein. Following the payment of the principal and interest with respect to the 2000A Certificates as provided in the preceding sentence, the Escrow Bank shall transfer to Alameda Municipal Power any remaining amounts in the Escrow Fund or otherwise held by it relating to the 2000A Certificates.

(b) Alameda Municipal Power hereby irrevocably instructs the Escrow Bank, in its capacity as 2000 Trustee, to give notice of prepayment of the 2000A Certificates, and the Escrow Bank, as 2000 Trustee, hereby agrees to give notice of prepayment of the 2000A Certificates in accordance with the applicable provisions of the 2000 Trust Agreement so as to timely prepay the 2000A Certificates on the prepayment date set forth in Exhibit A attached hereto and by this reference incorporated herein.

Section 6. Application of 2000 Bond Funds. On the date of original delivery of the Bonds and the deposit of a portion of the proceeds thereof in the Escrow Fund pursuant to Section 4, the Escrow Bank, as 2000 Trustee, is hereby directed to withdraw all amounts on deposit in the _____ Fund (\$_____) and transfer such sum to the Escrow Fund.

Section 7. Application of Certain Terms of 2000 Trust Agreement. All of the terms of the 2000 Trust Agreement relating to the making of payments of principal and interest with respect

to the 2000A Certificates are incorporated in this Escrow Deposit and Trust Agreement as if set forth in full herein. The provisions of the 2000 Trust Agreement relating to the limitations from liability and protections afforded the 2000 Trustee and the resignation and removal of the 2000 Trustee are also incorporated in this Escrow Deposit and Trust Agreement as if set forth in full herein and shall be the procedure to be followed with respect to any resignation or removal of the Escrow Bank hereunder.

Section 8. Compensation to Escrow Bank. Alameda Municipal Power shall pay the Escrow Bank full compensation for its duties under this Escrow Deposit and Trust Agreement, including out-of-pocket costs such as publication costs, prepayment or redemption expenses, legal fees and other costs and expenses relating hereto and, in addition, fees, costs and expenses relating to the purchase of any Escrow Securities after the date hereof. Under no circumstances shall amounts deposited in the Escrow Fund be deemed to be available for said purposes.

Section 9. Liabilities and Obligations of Escrow Bank. The Escrow Bank shall have no obligation to make any payment or disbursement of any type or incur any financial liability in the performance of its duties under this Escrow Deposit and Trust Agreement unless Alameda Municipal Power shall have deposited sufficient funds with the Escrow Bank. The Escrow Bank may rely and shall be protected in acting upon the written instructions of Alameda Municipal Power or its agents relating to any matter or action as Escrow Bank under this Escrow Deposit and Trust Agreement.

The Escrow Bank and its respective successors, assigns, agents and servants shall not be held to any personal liability whatsoever, in tort, contract, or otherwise, in connection with the execution and delivery of this Escrow Deposit and Trust Agreement, the establishment of the Escrow Fund, the acceptance of the moneys or any securities deposited therein, the purchase of the securities to be purchased pursuant hereto, the retention of such securities or the proceeds thereof, the sufficiency of the securities or any uninvested moneys held hereunder to accomplish the purposes set forth in Section 5 hereof, or any payment, transfer or other application of moneys or securities by the Escrow Bank in accordance with the provisions of this Escrow Deposit and Trust Agreement or by reason of any non-negligent act, non-negligent omission or non-negligent error of the Escrow Bank made in good faith in the conduct of its duties. The recitals of fact contained in the "whereas" clauses herein shall be taken as the statement of Alameda Municipal Power, and the Escrow Bank assumes no responsibility for the correctness thereof. The Escrow Bank makes no representations as to the sufficiency of the securities to be purchased pursuant hereto and any uninvested moneys to accomplish the purposes set forth in Section 5 hereof or to the validity of this Escrow Deposit and Trust Agreement as to Alameda Municipal Power or the Corporation and, except as otherwise provided herein, the Escrow Bank shall incur no liability in respect thereof. The Escrow Bank shall not be liable in connection with the performance of its duties under this Escrow Deposit and Trust Agreement except for its own negligence, willful misconduct or default, and the duties and obligations of the Escrow Bank shall be determined by the express provisions of this Escrow Deposit and Trust Agreement, and no implied covenants or obligations shall be read into this Escrow Deposit and Trust Agreement against the Escrow Bank. The Escrow Bank may consult with counsel, who may or may not be counsel to Alameda Municipal Power, and in reliance upon the written opinion of such counsel shall have full and complete authorization and protection in respect of any action taken, suffered or omitted by it in good faith in accordance therewith. Whenever the Escrow Bank shall deem it necessary or desirable that a

matter be proved or established prior to taking, suffering, or omitting any action under this Escrow Deposit and Trust Agreement, such matter (except the matters set forth herein as specifically requiring a certificate of a nationally recognized firm of independent certified public accountants or an opinion of counsel) may be deemed to be conclusively established by a written certification of Alameda Municipal Power.

Anything in this Escrow Deposit and Trust Agreement to the contrary notwithstanding, in no event shall the Escrow Bank be liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Escrow Bank has been advised of the likelihood of such loss or damage and regardless of the form of action.

The Escrow Bank agrees to accept and act upon instructions or directions pursuant to this Escrow Deposit and Trust Agreement sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods, provided, however, that, the Escrow Bank shall have received an incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing.

Alameda Municipal Power hereby assumes liability for, and hereby agrees (whether or not any of the transactions contemplated hereby are consummated), to the extent permitted by law, to indemnify, protect, save and hold harmless the Escrow Bank and its respective directors, officers, employees, successors, assigns, agents and servants from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements (including legal fees and disbursements) of whatsoever kind and nature which may be imposed on, incurred by, or asserted against, at any time, the Escrow Bank (whether or not also indemnified against by any other person under any other agreement or instrument) and in any way relating to or arising out of the execution and delivery of this Escrow Deposit and Trust Agreement, the establishment of the Escrow Fund, the retention of the moneys therein and any payment, transfer or other application of moneys or securities by the Escrow Bank in accordance with the provisions of this Escrow Deposit and Trust Agreement, or as may arise by reason of any act, omission or error of the Escrow Bank made in good faith in the conduct of its duties; provided, however, that Alameda Municipal Power shall not be required to indemnify the Escrow Bank against its own negligence or misconduct. The indemnities contained in this Section 9 shall survive the termination of this Escrow Deposit and Trust Agreement or the resignation or removal of the Escrow Bank.

Section 10. Amendment. This Escrow Deposit and Trust Agreement may be modified or amended at any time by a supplemental agreement which shall become effective when the written consents of the owners of one hundred percent (100%) in aggregate principal amount of the 2000A Certificates shall have been filed with the Escrow Bank. This Escrow Deposit and Trust Agreement may be modified or amended at any time by a supplemental agreement, without the consent of any such owners, but only (1) to add to the covenants and agreements of any party, other covenants to be observed, or to surrender any right or power herein or therein reserved to Alameda Municipal Power, (2) to cure, correct or supplement any ambiguous or defective provision contained herein, (3) in regard to questions arising hereunder or thereunder, as the parties hereto or thereto may deem necessary or desirable and which, in the

opinion of counsel, shall not materially adversely affect the interests of the owners of the 2000A Certificates or the Bonds, and that such amendment will not cause interest on the 2000A Certificates or the Bonds to become subject to federal income taxation. In connection with any contemplated amendment or revocation of this Escrow Deposit and Trust Agreement, prior written notice thereof and draft copies of the applicable legal documents shall be provided by Alameda Municipal Power to each rating agency then rating the 2000A Certificates.

Section 11. Severability. If any section, paragraph, sentence, clause or provision of this Escrow Deposit and Trust Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, sentence clause or provision shall not affect any of the remaining provisions of this Escrow Deposit and Trust Agreement. Notice of any such invalidity or unenforceability shall be provided to each rating agency then rating the 2000A Certificates.

Section 12. Notice of Escrow Bank and Alameda Municipal Power. Any notice to or demand upon the Escrow Bank may be served and presented, and such demand may be made, at the Principal Office of the Escrow Bank as specified by the Escrow Bank as 2000 Trustee in accordance with the provisions of (and as Principal Office is defined in) the 2000 Trust Agreement. Any notice to or demand upon Alameda Municipal Power shall be deemed to have been sufficiently given or served for all purposes by being mailed by first class mail, and deposited, postage prepaid, in a post office letter box, addressed to Alameda Municipal Power as provided in the 2000 Installment Sale Agreement (or such other address as may have been filed in writing by Alameda Municipal Power with the Escrow Bank).

Section 13. Merger or Consolidation of Escrow Bank. Any company into which the Escrow Bank may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Escrow Bank may sell or transfer all or substantially all of its corporate trust business, provided such company shall be eligible to act as trustee under the 2000 Trust Agreement, shall be the successor hereunder to the Escrow Bank without the execution or filing of any paper or any further act.

Section 14. Governing Law. This Escrow Deposit and Trust Agreement shall be governed by the laws of the State of California applicable to contracts made and performed in the State of California.

IN WITNESS WHEREOF, Alameda Municipal Power and the Escrow Bank have each caused this Escrow Deposit and Trust Agreement to be executed by their duly authorized officers all as of the date first written above.

ALAMEDA MUNICIPAL POWER

By: _____
General Manager

U.S. BANK NATIONAL ASSOCIATION, as
Escrow Bank

By: _____
Authorized Officer

01036.01;J10816

EXHIBIT A

PREPAYMENT SCHEDULE FOR THE 2000A CERTIFICATES

Prepayment <u>Date</u>	Prepaid <u>Principal</u>	<u>Interest</u>	Prepayment <u>Premium</u>	Total <u>Payment</u>
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ESCROW DEPOSIT AND TRUST AGREEMENT

by and between

ALAMEDA MUNICIPAL POWER

and

**U.S. BANK NATIONAL ASSOCIATION,
as Escrow Bank**

dated as of August 1, 2010

relating to the refunding of the outstanding
Electric System Revenue Taxable
Certificates of Participation, Series 2000A-T
(Alameda Power & Telecom)

ESCROW DEPOSIT AND TRUST AGREEMENT

This ESCROW DEPOSIT AND TRUST AGREEMENT, dated as of August 1, 2010, is by and between Alameda Municipal Power (formerly known as Alameda Power & Telecom), being the City of Alameda, California, acting by and through its Bureau of Electricity ("Alameda Municipal Power"), and U.S. Bank National Association, a national banking association duly organized and existing under the laws of the United States of America, as escrow bank and as 2000 Trustee (as defined herein)(the "Escrow Bank").

RECITALS:

WHEREAS, Alameda Municipal Power has heretofore caused the execution and delivery of Electric System Revenue Certificates of Participation, Series 2000A-T (the "2000A-T Certificates"), evidencing and representing the fractional undivided interests of the owners thereof in installment payments for certain property pursuant to a Distribution System Installment Sale Agreement, dated as of April 1, 2000 (the "2000 Installment Sale Agreement"), with the Alameda Public Improvement Corporation (the "Corporation"), of which \$_____ remains outstanding;

WHEREAS, the 2000A-T Certificates were executed and delivered pursuant to the terms of a Distribution System Trust Agreement, dated as April 1, 2000 (the "2000 Trust Agreement"), by and among Alameda Municipal Power, the Corporation and U.S. Bank National Association (successor by merger to U.S. Bank Trust National Association), as trustee thereunder (the "2000 Trustee");

WHEREAS, in order to provide for the repayment of the 2000A-T Certificates, the Corporation sold certain real property and improvements (the "2000 Property") to Alameda Municipal Power pursuant to the 2000 Installment Sale Agreement under which Alameda Municipal Power agreed to make installment payments to the Corporation (the "2000A-T Installment Sale Payments") in each year to pay the full amount of principal of and interest on the 2000A-T Certificates;

WHEREAS, Alameda Municipal Power has determined that, as a result of favorable financial market conditions, it is in the best interests of Alameda Municipal Power at this time to refinance Alameda Municipal Power's obligation to make the 2000A-T Installment Sale Payments and, as a result thereof, to provide for the prepayment of all outstanding 2000A-T Certificates on _____, 2010, at a prepayment price of 100% of the unpaid principal component thereof, plus the interest component accrued to the prepayment date, and to that end, Alameda Municipal Power proposes to enter into a new installment sale agreement, dated as of August 1, 2010, by and among the Alameda Public Financing Authority (the "Authority"), U.S. Bank National Association, as trustee, and Alameda Municipal Power;

WHEREAS, the Corporation and Alameda Municipal Power propose to provide for the payments described above and to appoint the Escrow Bank as their agent for the purpose of applying said deposit to provide for the payment of the 2000A-T Installment Sale Payments in accordance with the instructions provided by this Escrow Deposit and Trust Agreement and of

applying said 2000A-T Installment Sale Payments to the payment of the principal of and interest on the 2000A-T Certificates and the Escrow Bank desires to accept said appointment;

WHEREAS, the Corporation and Alameda Municipal Power wish to provide for the payment described above and to enter into this Escrow Deposit and Trust Agreement for the purpose of providing the terms and conditions for the deposit and application of amounts so deposited;

WHEREAS, the Authority has agreed to issue its \$_____ Alameda Public Financing Authority Revenue Bonds, 2010 Series A (Alameda Municipal Power Refinancing) (the "Bonds"), pursuant to the terms of an indenture, dated as August 1, 2010 (the "Indenture"), by and between the Authority and U.S. Bank National Association, as trustee thereunder (the "Trustee"), and to apply a portion of the proceeds thereof to accomplish such refinancing; and

WHEREAS, the Escrow Bank has full powers to act with respect to the escrow and trust created herein and to perform the duties and obligations to be undertaken pursuant to this Escrow Deposit and Trust Agreement.

AGREEMENT:

NOW, THEREFORE, in consideration of the above premises and of the mutual promises and covenants herein contained and for other valuable consideration, the parties hereto do hereby agree as follows:

Section 1. Definitions. Capitalized terms used but not otherwise defined herein, shall have the meanings ascribed thereto in the 2000 Trust Agreement.

Section 2. Appointment of Escrow Bank. Alameda Municipal Power hereby appoints the Escrow Bank as escrow bank for all purposes of this Escrow Deposit and Trust Agreement and in accordance with the terms and provisions of this Escrow Deposit and Trust Agreement, and the Escrow Bank hereby accepts such appointment.

Section 3. Establishment of Escrow Fund. There is hereby created by Alameda Municipal Power with, and to be held by, the Escrow Bank as security for the payment of the 2000A-T Certificates as hereinafter set forth, an irrevocable escrow to be maintained in trust by the Escrow Bank on behalf of Alameda Municipal Power and for the benefit of the owners of the 2000A-T Certificates, said escrow to be designated the "Escrow Fund." All moneys and securities (the "Escrow Securities") deposited in the Escrow Fund shall be held as a special fund for the payment of the principal and interest with respect to the 2000A-T Certificates in accordance with the provisions of this Escrow Deposit and Trust Agreement. If at any time the Escrow Bank shall receive actual knowledge that the moneys and Escrow Securities in the Escrow Fund will not be sufficient to make any payment required by Section 5 hereof, the Escrow Bank shall notify Alameda Municipal Power of such fact and Alameda Municipal Power shall immediately cure such deficiency with any legally available funds.

Section 4. Deposit into Escrow Fund; Investment of Amounts.

(a) Concurrently with delivery of the Bonds, Alameda Municipal Power shall cause to be transferred to the Escrow Bank for deposit into the Escrow Fund the amount of \$_____ in immediately available funds, derived as follows:

(i) \$_____ from the proceeds of the sale of the Bonds;

(ii) \$_____ from amounts on deposit in the _____ fund established under the 2000 Trust Agreement (the "_____ Fund"); and

(iii) \$_____ remitted to the Escrow Bank by Alameda Municipal Power from funds it has in its reserves.

(b) The Escrow Bank shall invest all moneys deposited into the Escrow Fund pursuant to the preceding paragraph in demand deposit United States Treasury Securities—State and Local Government Series (the "Escrow Securities"). The Escrow Securities shall be deposited with and held by the Escrow Bank in the Escrow Fund solely for the uses and purposes set forth herein.

(c) The Escrow Bank shall not be liable or responsible for any loss resulting from its full compliance with the provisions of this Escrow Deposit and Trust Agreement.

Section 5. Instructions as to Application of Deposit.

(a) The total amount of Escrow Securities and uninvested moneys deposited in the Escrow Fund pursuant to Section 4 shall be applied by the Escrow Bank for the sole purpose of paying the principal and interest with respect to the 2000A-T Certificates as the same shall become due and payable, all at the times and in the amounts set forth in Exhibit A attached hereto and by this reference incorporated herein. Following the payment of the principal and interest with respect to the 2000A-T Certificates as provided in the preceding sentence, the Escrow Bank shall transfer to Alameda Municipal Power any remaining amounts in the Escrow Fund or otherwise held by it relating to the 2000A-T Certificates.

(b) Alameda Municipal Power hereby irrevocably instructs the Escrow Bank, in its capacity as 2000 Trustee, to give notice of prepayment of the 2000A-T Certificates, and the Escrow Bank, as 2000 Trustee, hereby agrees to give notice of prepayment of the 2000A-T Certificates in accordance with the applicable provisions of the 2000 Trust Agreement so as to timely prepay the 2000 A-T Certificates on the prepayment date set forth in Exhibit A attached hereto and by this reference incorporated herein.

Section 6. Application of 2000 Bond Funds. On the date of original delivery of the Bonds and the deposit of a portion of the proceeds thereof in the Escrow Fund pursuant to Section 4, the Escrow Bank, as 2000 Trustee, is hereby directed to withdraw all amounts on deposit in the _____ Fund (\$_____) and transfer such sum to the Escrow Fund.

Section 7. Application of Certain Terms of 2000 Trust Agreement. All of the terms of the 2000 Trust Agreement relating to the making of payments of principal and interest with respect

to the 2000A-T Certificates are incorporated in this Escrow Deposit and Trust Agreement as if set forth in full herein. The provisions of the 2000 Trust Agreement relating to the limitations from liability and protections afforded the 2000 Trustee and the resignation and removal of the 2000 Trustee are also incorporated in this Escrow Deposit and Trust Agreement as if set forth in full herein and shall be the procedure to be followed with respect to any resignation or removal of the Escrow Bank hereunder.

Section 8. Compensation to Escrow Bank. Alameda Municipal Power shall pay the Escrow Bank full compensation for its duties under this Escrow Deposit and Trust Agreement, including out-of-pocket costs such as publication costs, prepayment or redemption expenses, legal fees and other costs and expenses relating hereto and, in addition, fees, costs and expenses relating to the purchase of any Escrow Securities after the date hereof. Under no circumstances shall amounts deposited in the Escrow Fund be deemed to be available for said purposes.

Section 9. Liabilities and Obligations of Escrow Bank. The Escrow Bank shall have no obligation to make any payment or disbursement of any type or incur any financial liability in the performance of its duties under this Escrow Deposit and Trust Agreement unless Alameda Municipal Power shall have deposited sufficient funds with the Escrow Bank. The Escrow Bank may rely and shall be protected in acting upon the written instructions of Alameda Municipal Power or its agents relating to any matter or action as Escrow Bank under this Escrow Deposit and Trust Agreement.

The Escrow Bank and its respective successors, assigns, agents and servants shall not be held to any personal liability whatsoever, in tort, contract, or otherwise, in connection with the execution and delivery of this Escrow Deposit and Trust Agreement, the establishment of the Escrow Fund, the acceptance of the moneys or any securities deposited therein, the purchase of the securities to be purchased pursuant hereto, the retention of such securities or the proceeds thereof, the sufficiency of the securities or any uninvested moneys held hereunder to accomplish the purposes set forth in Section 5 hereof, or any payment, transfer or other application of moneys or securities by the Escrow Bank in accordance with the provisions of this Escrow Deposit and Trust Agreement or by reason of any non-negligent act, non-negligent omission or non-negligent error of the Escrow Bank made in good faith in the conduct of its duties. The recitals of fact contained in the "whereas" clauses herein shall be taken as the statement of Alameda Municipal Power, and the Escrow Bank assumes no responsibility for the correctness thereof. The Escrow Bank makes no representations as to the sufficiency of the securities to be purchased pursuant hereto and any uninvested moneys to accomplish the purposes set forth in Section 5 hereof or to the validity of this Escrow Deposit and Trust Agreement as to Alameda Municipal Power or the Corporation and, except as otherwise provided herein, the Escrow Bank shall incur no liability in respect thereof. The Escrow Bank shall not be liable in connection with the performance of its duties under this Escrow Deposit and Trust Agreement except for its own negligence, willful misconduct or default, and the duties and obligations of the Escrow Bank shall be determined by the express provisions of this Escrow Deposit and Trust Agreement, and no implied covenants or obligations shall be read into this Escrow Deposit and Trust Agreement against the Escrow Bank. The Escrow Bank may consult with counsel, who may or may not be counsel to Alameda Municipal Power, and in reliance upon the written opinion of such counsel shall have full and complete authorization and protection in respect of any action taken, suffered or omitted by it in good faith in accordance therewith. Whenever the Escrow Bank shall deem it necessary or desirable that a

matter be proved or established prior to taking, suffering, or omitting any action under this Escrow Deposit and Trust Agreement, such matter (except the matters set forth herein as specifically requiring a certificate of a nationally recognized firm of independent certified public accountants or an opinion of counsel) may be deemed to be conclusively established by a written certification of Alameda Municipal Power.

Anything in this Escrow Deposit and Trust Agreement to the contrary notwithstanding, in no event shall the Escrow Bank be liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Escrow Bank has been advised of the likelihood of such loss or damage and regardless of the form of action.

The Escrow Bank agrees to accept and act upon instructions or directions pursuant to this Escrow Deposit and Trust Agreement sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods, provided, however, that, the Escrow Bank shall have received an incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing.

Alameda Municipal Power hereby assumes liability for, and hereby agrees (whether or not any of the transactions contemplated hereby are consummated), to the extent permitted by law, to indemnify, protect, save and hold harmless the Escrow Bank and its respective directors, officers, employees, successors, assigns, agents and servants from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements (including legal fees and disbursements) of whatsoever kind and nature which may be imposed on, incurred by, or asserted against, at any time, the Escrow Bank (whether or not also indemnified against by any other person under any other agreement or instrument) and in any way relating to or arising out of the execution and delivery of this Escrow Deposit and Trust Agreement, the establishment of the Escrow Fund, the retention of the moneys therein and any payment, transfer or other application of moneys or securities by the Escrow Bank in accordance with the provisions of this Escrow Deposit and Trust Agreement, or as may arise by reason of any act, omission or error of the Escrow Bank made in good faith in the conduct of its duties; provided, however, that Alameda Municipal Power shall not be required to indemnify the Escrow Bank against its own negligence or misconduct. The indemnities contained in this Section 9 shall survive the termination of this Escrow Deposit and Trust Agreement or the resignation or removal of the Escrow Bank.

Section 10. Amendment. This Escrow Deposit and Trust Agreement may be modified or amended at any time by a supplemental agreement which shall become effective when the written consents of the owners of one hundred percent (100%) in aggregate principal amount of the 2000A-T Certificates shall have been filed with the Escrow Bank. This Escrow Deposit and Trust Agreement may be modified or amended at any time by a supplemental agreement, without the consent of any such owners, but only (1) to add to the covenants and agreements of any party, other covenants to be observed, or to surrender any right or power herein or therein reserved to Alameda Municipal Power, (2) to cure, correct or supplement any ambiguous or defective provision contained herein, (3) in regard to questions arising hereunder or thereunder, as the parties hereto or thereto may deem necessary or desirable and which, in the

opinion of counsel, shall not materially adversely affect the interests of the owners of the 2000A-T Certificates or the Bonds, and that such amendment will not cause interest on the 2000A-T Certificates or the Bonds to become subject to federal income taxation. In connection with any contemplated amendment or revocation of this Escrow Deposit and Trust Agreement, prior written notice thereof and draft copies of the applicable legal documents shall be provided by Alameda Municipal Power to each rating agency then rating the 2000A-T Certificates.

Section 11. Severability. If any section, paragraph, sentence, clause or provision of this Escrow Deposit and Trust Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, sentence clause or provision shall not affect any of the remaining provisions of this Escrow Deposit and Trust Agreement. Notice of any such invalidity or unenforceability shall be provided to each rating agency then rating the 2000A-T Certificates.

Section 12. Notice of Escrow Bank and Alameda Municipal Power. Any notice to or demand upon the Escrow Bank may be served and presented, and such demand may be made, at the Principal Office of the Escrow Bank as specified by the Escrow Bank as 2000 Trustee in accordance with the provisions of (and as Principal Office is defined in) the 2000 Trust Agreement. Any notice to or demand upon Alameda Municipal Power shall be deemed to have been sufficiently given or served for all purposes by being mailed by first class mail, and deposited, postage prepaid, in a post office letter box, addressed to Alameda Municipal Power as provided in the 2000 Installment Sale Agreement (or such other address as may have been filed in writing by Alameda Municipal Power with the Escrow Bank).

Section 13. Merger or Consolidation of Escrow Bank. Any company into which the Escrow Bank may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Escrow Bank may sell or transfer all or substantially all of its corporate trust business, provided such company shall be eligible to act as trustee under the 2000 Trust Agreement, shall be the successor hereunder to the Escrow Bank without the execution or filing of any paper or any further act.

Section 14. Governing Law. This Escrow Deposit and Trust Agreement shall be governed by the laws of the State of California applicable to contracts made and performed in the State of California.

IN WITNESS WHEREOF, Alameda Municipal Power and the Escrow Bank have each caused this Escrow Deposit and Trust Agreement to be executed by their duly authorized officers all as of the date first written above.

ALAMEDA MUNICIPAL POWER

By: _____
General Manager

U.S. BANK NATIONAL ASSOCIATION, as
Escrow Bank

By: _____
Authorized Officer

01036.01:J10817

EXHIBIT A

PREPAYMENT SCHEDULE FOR THE 2000A-T CERTIFICATES

Prepayment <u>Date</u>	Prepaid <u>Principal</u>	<u>Interest</u>	Total <u>Payment</u>
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Approved as to Form


City Attorney

CITY OF ALAMEDA RESOLUTION NO. _____

APPROVING PROCEEDINGS TO REFINANCE INSTALLMENT PAYMENT OBLIGATIONS OF ALAMEDA MUNICIPAL POWER, APPROVING ISSUANCE OF REVENUE BONDS BY THE ALAMEDA PUBLIC FINANCING AUTHORITY FOR SUCH PURPOSES, AND APPROVING RELATED DOCUMENTS AND ACTIONS

WHEREAS, the City of Alameda (the "City") and the Community Improvement Commission of the City of Alameda have heretofore entered into a joint exercise of powers agreement establishing the Alameda Public Financing Authority (the "Authority") for the purpose, among others, of issuing its bonds to be used to provide financial assistance to the City;

WHEREAS, Alameda Municipal Power, being the City acting by and through its Bureau of Electricity ("Alameda Municipal Power"), has determined that, due to prevailing financial market conditions, it is in the best interests of Alameda Municipal Power to refinance certain outstanding installment payment obligations relating to Alameda Municipal Power's electric system (the "Electric System");

WHEREAS, for the purpose of raising funds necessary to provide financial assistance to Alameda Municipal Power to accomplish the refinancing, the Authority proposes to authorize the issuance of its revenue bonds under the provisions of Article 4 (commencing with section 6584) of Chapter 5 of Division 7 of Title 1 of the California Government Code (the "Act"), designated as the Alameda Public Financing Authority Revenue Bonds, Series 2010A (Alameda Municipal Power Refinancing) and Alameda Public Financing Authority Taxable Revenue Bonds, Series 2010B (Alameda Municipal Power Refinancing) (collectively, the "Bonds"), all pursuant to and secured by an indenture of trust (the "Indenture"), by and between the Authority and U.S. Bank National Association, as trustee (the "Trustee");

WHEREAS, in order to allow the Authority to participate in the refinancing program, the Authority will acquire the Electric System from Alameda Municipal Power pursuant to an acquisition agreement (the "Acquisition Agreement") by and between the Authority and Alameda Municipal Power;

WHEREAS, in order to provide for the repayment of the Bonds, the Authority will sell the Electric System back to Alameda Municipal Power pursuant to an installment sale agreement (the "Installment Sale Agreement"), under which Alameda Municipal Power will agree to make installment payments to the Authority payable from the net revenues of the Electric System which will be calculated to be sufficient, in time and amount, to enable the Authority to

pay the principal of and interest and premium (if any) on the Bonds when due and payable;

WHEREAS, proceeds of the Bonds will be used to prepay and discharge the installment payment obligations of Alameda Municipal Power pursuant to two Escrow Deposit and Trust Agreements (collectively, the "Escrow Agreements"), each between Alameda Municipal Power and U.S. Bank National Association, as escrow bank (the "Escrow Bank");

WHEREAS, the form of an official statement (the "Official Statement") describing the Authority, the City, Alameda Municipal Power, the Electric System, the Bonds and other matters to be used in connection with the marketing of the Bonds has been prepared;

WHEREAS, there has been prepared a form of bond purchase contract for the Bonds (the "Bond Purchase Contract"), to be entered into among the Authority, Alameda Municipal Power and JPMorgan Securities Inc. (the "Underwriter"), pursuant to which the Underwriter will agree to purchase the Bonds for reoffering to the public subject to the terms and conditions contained therein; and

WHEREAS, the City Council now desires to approve the transactions contemplated by the Bonds and the Installment Sale Agreement in furtherance of the public purposes of Alameda Municipal Power.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ALAMEDA as follows:

Section 1. Findings of Benefit. The City Council hereby finds that significant public benefits will arise from the refinancing of the Prior Installment Payment Obligations (as defined below) with proceeds of the Bonds, all in accordance with Section 6586 of the California Government Code, in that the refinancing will result in demonstrable savings in effective interest rates, bond preparation, bond underwriting and bond issuance costs, as contrasted with the sale of refinancing certificates of participation that would need to occur if the Authority did not issue the Bonds.

Section 2. Approval of Bonds. The City Council hereby approves the issuance of the Bonds by the Authority for the purpose, among others, of providing funds to allow Alameda Municipal Power to repay and discharge its obligations to make installment payments (the "Prior Installment Payment Obligations") under the Electric Improvements Installment Sale Agreement, dated as of April 1, 2000, among the Alameda Public Improvement Corporation (the "Corporation"), Alameda Municipal Power and the Escrow Bank in its capacity as trustee thereunder, and under the Distribution System Installment Sale Agreement, dated as of April 1, 2000, among the Corporation, Alameda Municipal Power and the Escrow Bank, as trustee thereunder; provided that (a)

the principal amount of Bonds does not exceed \$33,000,000, and (b) the final maturity date of the Bonds is not later than July 1, 2030.

Section 3. Approval of Installment Sale Agreement. The City Council hereby approves the Installment Sale Agreement in the form on file with the City Clerk. The City Manager and the General Manager of Alameda Municipal Power (the "Designated Officers"), each acting alone, are hereby authorized and directed to execute, and the City Clerk is hereby authorized and directed to attest to, the Installment Sale Agreement for and in the name and on behalf of Alameda Municipal Power in said form, together with such additions thereto or changes therein as the Designated Officer executing the Installment Sale Agreement shall, upon consultation with the City Attorney and Bond Counsel, deem necessary, desirable or appropriate, and the execution of the Installment Sale Agreement by Alameda Municipal Power shall be conclusive evidence of the approval of any such additions or changes. The City Council hereby authorizes the delivery and performance of the Installment Sale Agreement.

Section 4. Sale of Bonds. The City Council hereby approves the sale of the Bonds by the Authority by negotiation with the Underwriter pursuant to the Bond Purchase Contract in the form on file with the City Clerk. The Designated Officers, each acting alone, are hereby authorized and directed to execute the Bond Purchase Contract for and in the name and on behalf of Alameda Municipal Power in said form, together with such additions thereto or changes therein as the Designated Officer executing the Bond Purchase Contract shall, upon consultation with the City Attorney and Bond Counsel, deem necessary, desirable or appropriate, and the execution of the Bond Purchase Contract by Alameda Municipal Power shall be conclusive evidence of the approval of any such additions or changes. A Designated Officer shall execute the Bond Purchase Contract only upon the submission of an offer by the Underwriter to purchase the Bonds, which offer is acceptable to a Designated Officer and consistent with the requirements of this Resolution. The amount of Underwriter's discount for the Bonds shall be not more than 1.0% of the par amount thereof (not taking into account any original issue discount on the sale thereof).

Section 5. Official Statement. The City Council hereby approves the preliminary Official Statement in the form on file with the City Clerk. The Designated Officers, each acting alone, are hereby authorized and directed to deem final within the meaning of Rule 15c2-12 of the Securities Exchange Act of 1934 except for permitted omissions, the preliminary form of the Official Statement describing the Bonds, together with such additions thereto and changes therein as a Designated Officer shall deem necessary, desirable or appropriate. Distribution of the preliminary Official Statement is hereby approved. The General Manager is hereby authorized to execute the final form of the Official Statement, including as it may be modified by such additions thereto and changes therein as the General Manager of Alameda Municipal Power shall deem necessary, desirable or appropriate, and the execution of the final Official Statement by Alameda Municipal Power shall be conclusive

evidence of the approval of any such additions and changes. The City Council hereby authorizes the distribution of the final Official Statement by the Underwriter.

Section 6. Approval of Acquisition Agreement, Escrow Agreements and Continuing Disclosure Certificate. The City Council hereby approves the Acquisition Agreement and the Escrow Agreements in the forms on file with the City Clerk, and a Continuing Disclosure Certificate related to the Bonds (the "Continuing Disclosure Certificate") in the form attached to the Official Statement as Appendix E. The Designated Officers, each acting along, are hereby authorized and directed to execute the Acquisition Agreement, the Escrow Agreements and the Continuing Disclosure Certificate in such forms, together with such additions thereto or changes therein as the Designated Officer executing such agreements shall, upon consultation with the City Attorney and Bond Counsel, deem necessary, desirable or appropriate, and the execution of the Acquisition Agreement, the Escrow Agreements and the Continuing Disclosure Certificate by Alameda Municipal Power shall be conclusive evidence of the approval of any such additions or changes.

Section 7. Bond Counsel. Quint & Thimmig LLP, San Francisco, California, is hereby designated as bond counsel in connection with the issuance of the Bonds. The City Attorney is hereby authorized and directed to execute an Agreement for Legal Services with such firm for its services related to the Bonds and the refinancing program, so long as the payment of the fees and expenses of such firm are payable from the proceeds of, and is contingent upon the issuance of, the Bonds.

Section 8. Official Actions. The Mayor, City Manager, General Manager of Alameda Municipal Power, City Finance Director, City Clerk and any and all other officers of the City are hereby authorized and directed, for and in the name and on behalf of Alameda Municipal Power, to do any and all things and take any and all actions, including execution and delivery of any and all assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance, warrants and other documents, including the application to providers of municipal bond insurance for the Bonds, which they, or any of them, may deem necessary or advisable in order to consummate the lawful issuance and sale of the Bonds, the discharge of the Prior Installment Payment Obligations and the consummation of the transactions described in the documents approved by this Resolution.

Section 9. Effective Date. This Resolution shall take effect upon its adoption by the City Council.

* * * * *

I, the undersigned, hereby certify that the foregoing Resolution was duly and regularly adopted and passed by the Council of the City of Alameda in a regular meeting assembled on the 20th day of July, 2010, by the following vote to wit:

AYES

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the seal of said City this 21st day of July, 2010.

Lara Weisiger, City Clerk
City of Alameda

CITY OF ALAMEDA

Memorandum

To: Honorable Mayor and
Members of the City Council

From: Ann Marie Gallant
Interim City Manager

Date: July 20, 2010

Re: Introduce an Ordinance to Amend Alameda Municipal Code Section 8-7.11 to Allow the Issuance of Temporary One-Day Parking Permits

BACKGROUND

On January 7, 2010, the City Council adopted an ordinance to prohibit the parking of recreational vehicles (RVs), boats, and trailers on city streets. The ordinance, which was codified as Section 8-7.11 in the Alameda Municipal Code (AMC), became effective on February 6, 2010.

DISCUSSION

As adopted, AMC Section 8-7.11 included no language to permit RV, boat and trailer owners to park on city streets temporarily. As a result, owners of these vehicles who arrived home late at night, or were planning to leave early in the morning, could not park their vehicles on the streets without running the risk of receiving a parking citation.

The proposed Ordinance would amend the AMC to allow owners to obtain a temporary permit from the Police Department to park their RVs, boats, and trailers on city streets. These permits will be issued by the Alameda Police Department for a period not to exceed 24 hours. In addition, no more than two such permits will be issued to an individual owner in a month.

FINANCIAL IMPACT

The costs to implement the permit parking program are minimal and will be covered by the Police Department's FY10-11 budget.

MUNICIPAL CODE/POLICY DOCUMENT CROSS REFERENCE

Existing Alameda Municipal Code Section 8-7.11:

City Council
Report Re:
Agenda Item #6-B
07-20-10

8-7.11 Recreational Vehicles, Trailers, and Boat Trailers Prohibited.

It shall be unlawful for any person to park or to leave unattended any recreational vehicle (as defined in Section 18010 of the Health and Safety Code), trailer (as defined in Section 630 of the Vehicle Code) or boat trailer (whether or not such trailer or boat trailer is hitched to a motor vehicle) on the streets of the City of Alameda. Such recreational vehicles, trailers and/or boat trailers may be towed to, and stored at, an impound facility at the owner's expense.

Proposed amendment to Alameda Municipal Code Section 8-7.11:

8-7.11 Recreational Vehicles, Trailers, and Boat Trailers: Prohibitions; Exceptions.

(a) It shall be unlawful for any person to park or to leave unattended any recreational vehicle (as defined in Section 18010 of the Health and Safety Code), trailer (as defined in Section 630 of the Vehicle Code) or boat trailer (whether or not such trailer or boat trailer is hitched to a motor vehicle) on the streets of the City of Alameda. Such recreational vehicles, trailers and/or boat trailers may be towed to, and stored at, an impound facility at the owner's expense.

(b) Notwithstanding the foregoing:

1. Recreational vehicles, trailers, and boat trailers may park on the street pursuant to a temporary permit issued by the Alameda Police Department. Temporary permits shall not exceed a twenty-four (24) hour period and no more than two (2) temporary permits will be issued for any single recreational vehicle, trailer or boat trailer within a single calendar month.

RECOMMENDATION

Introduce an Ordinance amending Alameda Municipal Code Section 8-7.11 to allow the issuance of temporary, one-day permits for the parking of RV's, boats, and trailers on city streets.

Respectfully submitted,



Michael C. Noonan
Interim Chief of Police

MCN:sml

Approved as to Form

[Signature]
City Attorney

CITY OF ALAMEDA ORDINANCE NO. _____
New Series

AMENDING THE ALAMEDA MUNICIPAL CODE BY AMENDING
SUBSECTION 8-7.11 (RECREATIONAL VEHICLES, TRAILERS,
AND BOAT TRAILERS) OF SECTION 8-7 (PARKING
PROHIBITIONS) OF CHAPTER VIII (TRAFFIC, MOTOR VEHICLES
AND ALTERNATIVE TRANSPORTATION MODES)

BE IT ORDAINED by the Council of the City of Alameda that:

Section 1. Subsection 8-7.11 of the Alameda Municipal Code is hereby
amended to read as follows:

**8-7.11 Recreational Vehicles, Trailers, and Boat Trailers: Prohibitions;
Exceptions.**

(a) It shall be unlawful for any person to park or to leave unattended any
recreational vehicle (as defined in Section 18010 of the Health and Safety Code),
trailer (as defined in Section 630 of the Vehicle Code) or boat trailer (whether or
not such trailer or boat trailer is hitched to a motor vehicle) on the streets of the
City of Alameda. Such recreational vehicles, trailers and/or boat trailers may be
towed to, and stored at, an impound facility at the owner's expense.

(b) Notwithstanding the foregoing:

1. Recreational vehicles, trailers, and boat trailers may park on the street
pursuant to a temporary permit issued by the Alameda Police Department.
Temporary permits shall not exceed a twenty-four (24) hour period and no more
than two (2) temporary permits will be issued for any single recreational vehicle,
trailer or boat trailer within a single calendar month.

Section 2. This Ordinance shall be in full force and effect from and
after the expiration of thirty (30) days from the date of its final passage.

Presiding Officer of the City Council

Attest:

Lara Weisiger, City Clerk
City of Alameda

* * * * *

I, the undersigned, hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by the Council of the City of Alameda in a regular meeting assembled on the ____ day of _____, 2010, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this ____ day of _____, 2010.

Lara Weisiger, City Clerk
City of Alameda

COUNCIL REFERRAL FORM
(To be submitted to the City Clerk)

Name of Council member requesting Referral: Frank Matarrese

Date of submission to City Clerk (must be submitted before 5:00 p.m. on the Monday before the week of the Council meeting requested): July 08, 2010

Requested Council Meeting date to consider Council Referral: 20 or 27 July 2010*

Brief description of the subject to be printed on the agenda, sufficient to inform the City Council and public of the nature of the Council Referral:

Consideration of Establishing a Foreign Trade Zone (FTZ) in Alameda

This council referral requests that the Council consider the following:

Direct the Interim City Manager to research and make a recommendation regarding the establishment of a Foreign Trade Zone in Alameda in order to increase Alameda's industrial base, attract business investment, create jobs and explore the potential to address blighted or vacant commercial space in Alameda.

Background

U.S. Foreign-Trade Zones are designated by the Federal Government and located in defined geographical areas, in or adjacent to U.S. Customs Ports of Entry. In these zones, commercial merchandise receives the same Customs treatment it would if it were outside the commerce of the United States.

The tariff and tax relief granted in FTZ's is designed to lower the costs of U.S.-based operations engaged in international trade or foreign investors exporting goods bound for adjacent markets or used for further manufacturing within the FTZ and thereby create economic development and job creation opportunities that result from those operations

*At the discretion of the Interim City Manager

Council Referral #8-A
7-20-10

COUNCIL REFERRAL FORM

Name of Councilmember requesting referral: Mayor Johnson

Date of submission to City Clerk (must be submitted before 5:00 p.m. on the Monday before the Council meeting requested): July 12, 2010

Council Meeting date: July 20, 2010

Brief description of the subject to be printed on the agenda, sufficient to inform the City Council and public of the nature of the referral:

On July 6, the City Council met in closed session to discuss evidence of misconduct by Councilmember Tam regarding, among other things, providing attorney-client privileged, personnel and other confidential information to SunCal, IAFF, and other parties.

The City's Sunshine Task Force was charged with fostering open and transparent government. In light of the two investigatory reports filed with the District Attorney, I am recommending suspending the Sunshine Task Force activities and meetings until the conclusion of the investigation.

Council Referral #8-B
7-20-10

COUNCIL REFERRAL FORM

Name of Councilmember requesting referral: Marie Gilmore

Date of submission to City Clerk (must be submitted before 5:00 p.m. on the Monday before the Council meeting requested): _____

Council Meeting date: July 20, 2010

Brief description of the subject to be printed on the agenda, sufficient to inform the City Council and public of the nature of the referral: 4th of July

Parade: Discuss/review City Contributions
to parade. Determine, if necessary, any
rules regarding participation, signs, campaigning etc.

CURRENT APPLICATIONS
HOUSING COMMISSION
THREE VACANCIES
(Two full terms expiring 06/30/14 and
One Tenant seat full term expiring 6/30/12)

Ian Couwnberg, Incumbent

CURRENT APPLICATIONS
PLANNING BOARD
ONE VACANCIES
(Full term expiring 6/30/14)

Melanie Braun

Ian Couwenberg

Charlyn Hook

John Knox White

Kristoffer Köster

Thuy Nguyen

Rodrigo Orduna

Stuart Rickard

Robert Robillard

Hallie VonRock

Charles Patrick Wallis

CURRENT APPLICATIONS
PUBLIC UTILITIES BOARD
ONE VACANCY
(Full term expiring 6/30/14)

Ruth Abbe

Madeline Deaton

Mary Sutter

The June 24, 2010 Joint City
Council, APFA, ARRA and
CIC Meeting Minutes are
included in the packet under
Joint Item #2-A

UNAPPROVED

MINUTES OF THE REGULAR ALAMEDA PUBLIC

FINANCING AUTHORITY (APFA) MEETING

TUESDAY - - - JULY 6, 2010 - - - 7:01 P.M.

Roll Call -

Absent: None.

(10-) Minutes of the Regular APFA Meeting of June 15, 2010. Approved.

Authority Member Matarrese seconded the motion, which carried by unanimous voice vote – 5.

None.

None.

Adjournment

Respectfully submitted,

The agenda for this meeting was posted in accordance with the Brown Act.

UNAPPROVED

MINUTES OF THE REGULAR ALAMEDA PUBLIC
FINANCING AUTHORITY (APFA) MEETING
WEDNESDAY- -JULY 7, 2010- -7:01 P.M.

Chair Johnson convened the meeting at 7:34 p.m.

Roll Call - Present: Authority Members deHaan, Gilmore, Matarrese, Tam and Chair Johnson – 5.

Absent: None.

Agenda Items

None.

Oral Communications

None.

Board Communications

None.

Adjournment

There being no further business, Chair Johnson adjourned the meeting at 7:34 p.m.

Respectfully submitted,

Lara Weisiger, Secretary
APFA

The agenda for this meeting was posted in accordance with the Brown Act.

CITY OF ALAMEDA

Memorandum

To: Honorable Chair and the
Members of the Alameda Public Financing Authority Board

From: Ann Marie Gallant
Interim Executive Director

Date: July 20, 2010

Re: Authorize Issuance of Revenue Bonds by the Alameda Public Financing
Authority to Refinance Installment Payment Obligations of Alameda
Municipal Power, and Approve Related Documents and Actions

BACKGROUND

At its January 19, 2000 meeting, the City Council and the Alameda Public Improvement Corporation approved the sale and delivery of Certificates of Participation (COPs) to provide for the expansion and improvement of the electric system, refinancing of outstanding installment sale obligations, and to provide for the partial defeasance of certain obligations of Alameda Municipal Power (AMP) related to the Northern California Power Agency. The fixed-interest Series 2000A COPs were issued for \$9,545,000 and the variable-interest auction-rate Series 2000AT COPs were issued for \$29,500,000. On June 28, 2001, the Public Utilities Board authorized the execution of an International Swap Dealers Association (ISDA) Master Agreement for an Interest-Rate Swap for the auction-rate Series 2000AT COPs in order to convert variable interest-rate to a fixed Interest-rate. The Interest-Rate Swap agreement expired on July 1, 2010.

AMP has determined that it is in its best interest to refinance outstanding installment payment obligations from the Series 2000A and the Series 2000AT COPs. To accomplish the refinancing, it is proposed that the Alameda Public Financing Authority ("Authority"), authorize the issuance of its revenue bonds ("Bonds"), all pursuant to and secured by an Indenture of Trust ("Indenture") by and between the Authority and U.S. Bank National Association (the "Trustee"). The Authority will acquire the electric system from AMP pursuant to an Acquisition Agreement ("Acquisition Agreement"). In order to provide for repayment of the Bonds, the Authority will sell the electric system back to AMP pursuant to an Installment Sale Agreement ("Installment Sale Agreement"), under which AMP will agree to make installment payments to the Authority payable from net revenues of the electric system.

The Bonds will be designated as the Alameda Public Financing Authority Revenue Bonds, Series 2010A (Alameda Municipal Power Refinancing) and the Alameda Public Financing Authority Taxable Revenue Bonds, Series 2010B (Alameda Municipal Power Refinancing). Proceeds of the Bonds will be used to prepay and discharge the

installment obligations of AMP pursuant to two escrow deposit and trust agreements between AMP and U.S. Bank, as escrow bank. An official statement ("Official Statement"-Exhibit 1) to be used in connection with the marketing of the Bonds has been prepared. A Bond purchase contract ("Purchase Contract"-Exhibit 5), pursuant to which JP Morgan Securities Inc. (the "Underwriter") will agree to purchase the Bonds for reoffering to the public, has been prepared.

DISCUSSION

AMP hired McDonald Partners as its Financial Advisor (FA) for financial planning, and to review AMP's Series 2000A and 2000AT Certificates of Participation (COPs). The FA conducted a comprehensive review of AMP's financial planning goals, the COPs, and bond coverage requirements. Additionally, staff developed a series of assumptions and scenarios with the FA to generate a Ten Year Financial Plan used to balance revenue with expenses while maintaining adequate reserves.

At the February 22, 2010 Public Utilities Board (Board) meeting, the FA provided a market update, a debt refunding analysis, an alternative structuring of reserves, and the credit implications of implementing the debt/reserve alternatives. At that time, the recommendation was to pursue a refunding of the COPs at the beginning of the new fiscal year. At the May 17, 2010 Board meeting, the General Manager of AMP was authorized to hire a financial team to refinance the COPs.

In addition to the advantages to AMP provided by restructuring the financing documents, the refinancing will accomplish certain goals established in the comprehensive financing plan, including refinancing existing taxable auction-rate securities (the 2000AT COPs) to mitigate interest-rate exposure, buying down taxable debt with excess reserves, and funding debt service reserve accounts with cash in lieu of a MBIA surety policy.

By early June, the financial team had organized the refinancing plan and produced draft financing documents including the Indenture of Trust, the Installment Sale Agreement and the Official Statement. Under the new issuance, the Series 2010A Bonds will refinance the existing Series 2000A COPs, and the Series 2010B Bonds will refinance the existing Series 2000AT COPs. The complete refinancing of the existing Series 2000A/AT COPs will provide for the addition of a Rate Stabilization Fund, a combined Debt Service Reserve Fund that may secure all parity debt and interest earnings being permitted in the rate covenant. Also, the ability to utilize tax advantage structures (such as Build-America-Bonds) in future supplements has been included. As with the prior bond issues, the Bonds will be payable from installment payments by AMP, that will be payable from revenues from the electric system.

Under applicable law and the joint powers agreement that created the Authority, the Authority is authorized to enter into the Installment Sale Agreement with the City and to issue its Bonds payable from the installment payments by AMP. AMP has been advised that the proposed financing structure, using revenue bonds rather than

certificates of participation (as was done in connection with the 2000A and 2000AT COPs) would result in lower interest costs to AMP.

The schedule for issuance of the Bonds is:

Complete approvals and authorizations	July 20, 2010
Price bonds	August 3, 2010
Closing date	August 12, 2010

FINANCIAL IMPACT

The proposed resolution will authorize the Authority to issue up to \$33,000,000 of the Bonds; however, it is currently estimated that the Series 2010A Bonds will be issued in the approximate amount of \$8,800,000, and the Series 2010B Bonds will be issued in the approximate amount of \$23,400,000. The additional Bond authorization will allow flexibility if bond market conditions change before the Bonds are sold. AMP will also provide funds from reserves to assist in the refinancing. No Authority assets or funds will be involved in the transaction.


As of July 7, 2010, the refinancing of the Series 2000A would result in approximately \$1,500,000 gross savings and nearly \$600,000 in net present value savings. While the refinancing of the Series 2000AT is primarily to mitigate interest-rate exposure, it is estimated that the refinancing would result in approximately \$1,200,000 of present value savings if short-term taxable interest rates were to rise to the average rate on such securities for the last 20 years, over the next five years. While there can be no assurance that an increase in short-term rates will happen exactly as modeled, or that such savings will materialize, the financing team believes it is an opportune time to mitigate interest-rate risk for the remaining term of the bonds.

All costs of the transaction will be paid by AMP from proceeds of the Bonds. The funds for the payment of the installment payments by AMP have been included in AMP's FY 2010-11 Budget approved by the Board on June 28, 2010.

RECOMMENDATION

Adopt the Resolution approving the issuance of revenue bonds by the Alameda Public Financing Authority, and approving related documents and actions.

Respectfully submitted,



Girish Balachandran
General Manager

RO:ra

Exhibits:

1. Acquisition Agreement
2. Sources and Uses of Funds
3. Official Statement for the 2010 Bonds – on file in the City Clerk's Office
4. Indenture of Trust – on file in the City Clerk's Office
5. Installment Sale Agreement – on file in the City Clerk's Office
6. Bond Purchase Contract – on file in the City Clerk's Office

cc: Public Utilities Board

Exhibit 1 and 2 for
APFA Item #3-A
are attached to the
6-A Staff Report

Re: APFA Item #3-A
07-20-10

ALAMEDA PUBLIC FINANCING AUTHORITY RESOLUTION NO. _____

AUTHORIZING THE ISSUANCE AND SALE OF
REVENUE BONDS TO REFINANCE INSTALLMENT
PAYMENT OBLIGATIONS OF ALAMEDA MUNICIPAL
POWER, AND APPROVING RELATED DOCUMENTS
AND ACTIONS

Approved as to Form


General Counsel

WHEREAS, the City of Alameda (the "City") and the Community Improvement Commission of the City of Alameda have heretofore entered into a joint exercise of powers agreement establishing the Alameda Public Financing Authority (the "Authority") for the purpose, among others, of issuing its bonds to be used to provide financial assistance to the City;

WHEREAS, Alameda Municipal Power, being the City acting by and through its Bureau of Electricity ("Alameda Municipal Power"), has determined that, due to prevailing financial market conditions and to meet certain financial objectives, it is in the best interests of Alameda Municipal Power to refinance certain outstanding installment payment obligations relating to Alameda Municipal Power's electric system (the "Electric System");

WHEREAS, for the purpose of raising funds necessary to provide financial assistance to Alameda Municipal Power to accomplish the refinancing, the Authority proposes to authorize the issuance of its revenue bonds under the provisions of Article 4 (commencing with section 6584) of Chapter 5 of Division 7 of Title 1 of the California Government Code (the "Act"), designated as the Alameda Public Financing Authority Revenue Bonds, Series 2010A (Alameda Municipal Power Refinancing) and Alameda Public Financing Authority Taxable Revenue Bonds, Series 2010B (Alameda Municipal Power Refinancing) (collectively, the "Bonds"), all pursuant to and secured by an indenture of trust (the "Indenture"), by and between the Authority and U.S. Bank National Association, as trustee (the "Trustee");

WHEREAS, in order to allow the Authority to participate in the refinancing program, the Authority will acquire the Electric System from Alameda Municipal Power pursuant to an acquisition agreement (the "Acquisition Agreement") by and between the Authority and Alameda Municipal Power;

WHEREAS, in order to provide for the repayment of the Bonds, the Authority will sell the Electric System back to Alameda Municipal Power pursuant to an installment sale agreement (the "Installment Sale Agreement"), under which Alameda Municipal Power will agree to make installment payments to the Authority payable from the net revenues of the Electric System which will be calculated to be sufficient, in time and amount, to enable the Authority to pay the principal of and interest and premium (if any) on the Bonds when due and payable;

Resolution #3-A
7-20-10 APFA

WHEREAS, the form of an official statement (the "Official Statement") to be used in connection with the marketing of the Bonds, has been prepared;

WHEREAS, there has been prepared a form of bond purchase contract for the Bonds (the "Bond Purchase Contract"), to be entered into among the Authority, Alameda Municipal Power and JPMorgan Securities Inc. (the "Underwriter"), pursuant to which the Underwriter will agree to purchase the Bonds for reoffering to the public subject to the terms and conditions contained therein; and

WHEREAS, the Board of Directors has duly considered the transactions contemplated by the Indenture, the Bonds and the Installment Sale Agreement and wishes at this time to approve said transactions in the public interests of the Authority.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE ALAMEDA PUBLIC FINANCING AUTHORITY as follows:

Section 1. Findings. Each of the above recitals is true and correct. Pursuant to the Act, the Board of Directors hereby finds and determines that the issuance of the Bonds will result in savings in effective interest rates, bond underwriting costs, bond issuance costs and reduce interest rate risk, and thereby result in significant public benefits to its members within the contemplation of Section 6586 of the Act.

Section 2. Issuance of Bonds; Approval of Indenture. The Board of Directors hereby authorizes the issuance of the Bonds under and pursuant to the Act and the Indenture in the aggregate principal amount of not to exceed \$33,000,000 for the purpose of providing funds to enable Alameda Municipal Power to repay and discharge its repayment obligations with respect to the 2000A and 2000A-T Certificates of Participation (as defined in the Indenture). The Board of Directors hereby approves the Indenture in the form on file with the Secretary. The Chair, the Executive Director and the Treasurer (the "Designated Officers"), each acting alone, are hereby authorized and directed to execute, and the Secretary is hereby authorized and directed to attest the Indenture in said form, together with such additions thereto or changes therein as the Designated Officer executing the Indenture shall, upon consultation with the City Attorney and Bond Counsel, deem necessary, desirable or appropriate, and the execution of the Indenture by the Authority shall be conclusive evidence of the approval of any such additions or changes. The Board of Directors hereby authorizes the delivery and performance of the Indenture.

Section 3. Approval of Installment Sale Agreement and Acquisition Agreement. The Board hereby approves the Installment Sale Agreement and the Acquisition Agreement in the respective forms on file with the Secretary. The Designated Officers, each acting alone, are hereby authorized and directed

to execute, and the Secretary is hereby authorized and directed to attest the Installment Sale Agreement and the Acquisition Agreement in said forms, together with such additions thereto or changes therein as the Designated Officer executing the Installment Sale Agreement and the Acquisition Agreement shall, upon consultation with the City Attorney and Bond Counsel, deem necessary, desirable or appropriate, and the execution of the Installment Sale Agreement and the Acquisition Agreement by the Authority shall be conclusive evidence of the approval of any such additions or changes. The Board of Directors hereby authorizes the delivery and performance of the Installment Sale Agreement and the Acquisition Agreement.

Section 4. Sale of Bonds. The Board of Directors hereby approves the sale of the Bonds by the Authority by negotiation with the Underwriter pursuant to the Bond Purchase Contract in the form on file with the Secretary. The Designated Officers, each acting alone, are hereby authorized and directed to execute the Bond Purchase Contract for and in the name and on behalf of the Authority in said form, together with such additions thereto or changes therein as the Designated Officer executing the Bond Purchase Contract shall, upon consultation with the City Attorney and Bond Counsel, deem necessary, desirable or appropriate, and the execution of the Bond Purchase Contract by the Authority shall be conclusive evidence of the approval of any such additions or changes. A Designated Officer shall execute the Bond Purchase Contract only upon the submission of an offer by the Underwriter to purchase the Bonds, which offer is acceptable to a Designated Officer and consistent with the requirements of this Resolution. The amount of Underwriter's discount for the Bonds shall be not more than 1.0% of the par amount thereof (not taking into account any original issue discount on the sale thereof).

Section 5. Official Statement. The Board of Directors hereby approves the preliminary Official Statement in the form on file with the Secretary. The Designated Officers, each acting alone, are hereby authorized and directed to deem final within the meaning of Rule 15c2-12 of the Securities Exchange Act of 1934 except for permitted omissions, the preliminary form of the Official Statement, in such form, together with such additions thereto and changes therein as a Designated Officer shall deem necessary, desirable or appropriate. Distribution of the preliminary Official Statement is hereby approved. The Designated Officers, each acting alone, are hereby authorized to execute the final form of the Official Statement, including as it may be modified by such additions thereto and changes therein as any Designated Officer shall deem necessary, desirable or appropriate, and the execution of the final Official Statement by the Authority shall be conclusive evidence of the approval of any such additions and changes. The Board of Directors hereby authorizes the distribution of the final Official Statement.

Section 6. Official Actions. The Chair, the Executive Director, the Treasurer, the Secretary and any and all other officers of the Authority are hereby authorized and directed, for and in the name and on behalf of the Authority, to do any and all things and take any and all actions, including

execution and delivery of any and all assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance, warrants and other documents, including the application to providers of municipal bond insurance for the Bonds, which they, or any of them, may deem necessary or advisable in order to consummate the lawful issuance and sale of the Bonds and the consummation of the transactions as described in the documents approved by this Resolution.

Section 7. Effective Date. This Resolution shall take effect upon its adoption by the Board of Directors.

* * * * *

I, the undersigned Secretary of the Alameda Public Financing Authority, hereby certify that the foregoing is a full, true and correct copy of a resolution duly adopted by the Board of Directors of the Authority at a regular meeting thereof on the 20th day of July, 2010, by the following vote of the members thereof:

AYES:

NOES:

ABSTAIN:

ABSENT:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the seal of said Authority, this 21st day of July, 2010.

Secretary
Alameda Public Financing
Authority